

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

CASE NO. 4:21-cr-289-O

UNITED STATES OF AMERICA,)

)

Government,)

)

VS.)

)

)

HOLLIS MORRISON GREENLAW)

(1), BENJAMIN LEE WISSINK)

(2), CARA DELIN OBERT (3),)

JEFFREY BRANDON JESTER)

(4),)

)

Defendants.)

January 12, 2022

VOLUME 3

TRANSCRIPT OF THE JURY TRIAL
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

January 12, 2020

oOo

(Following is Day 1 the testimony portion
of the trial beginning at 12:20 p.m.)

THE COURT: Thank you.

Do you have a witness?

MS. EGGERS: Oh, yes, your Honor. I'm
sorry. Blake Buffington.

THE COURT: Would you raise your hand to
be sworn?

(The oath was administered.)

THE WITNESS: I do.

THE COURT: Go ahead and drop your mask,
speak up good and loud so everyone can hear what you
have to say.

DIRECT EXAMINATION

(BY MS. EGGERS:)

Q. If you would, please state your name.

A. Thomas Blake Buffington, Jr.

Q. Mr. Buffington, not your actual home address,
but what general part of the state of Texas do you
live in?

A. I live in Austin. In Austin.

Q. What line of work have you held over the years?

1 A. I'm a licensed attorney in Texas, and I've also
2 been involved in home building and real estate
3 development.

4 Q. Approximately how long have you been involved
5 in home building and real estate development?

6 A. For, primarily, since the end of 2012. So
7 since the beginning of 2013.

8 Q. And what's the name of the business that you
9 worked for or with between approximately 2009 until
10 just not long ago?

11 A. Buffington Land.

12 Q. And was that a family-owned business or who was
13 that?

14 A. The business was owned by my father and another
15 gentleman.

16 Q. And who was the other gentleman?

17 A. Mr. Patrick Starley.

18 Q. And just generally describe the type of
19 business?

20 A. Residential land development in central Texas,
21 buying undeveloped acreage, entitling it, and
22 developing it into single-family lots for homes.

23 Q. And over the course of the time that you had
24 that or you worked for that company, did you hold
25 the same position the whole time, or did you hold

1 different roles at periods of time?

2 A. I was essentially outside counsel as an
3 attorney from January of 2009 through December of
4 2012. And then, in December of 2012, my primary
5 focus changed to my role as a vice president of
6 Buffington Land, primarily in business activities at
7 that point.

8 Q. And just generally describe that role when you
9 went from being a lawyer to being vice president for
10 us.

11 A. So I worked with my father and James Dorney,
12 who was the president of the company and also, of
13 course, our staff in developing land, entitling land
14 to sell to our related home building company and
15 other home builders.

16 Q. And with the Buffington Land, did y'all have
17 loans from, like, regular financial institutions,
18 like Bank of America, Wells Fargo, that type of
19 thing?

20 A. Yes. My father and Mr. Starley had commercial
21 loans initially.

22 Q. Did that, at some point, change where, other
23 than the commercial loans, that there was a
24 different kind of lender that was utilized?

25 A. Yeah. Prior to my association, Mr. Starley and

1 my father were not able to get those commercial
2 loans renewed. And in approximately May of 2008,
3 they refinanced their facility into UDF facilities.

4 Q. And once you took the position of vice
5 president, did you become familiar with the terms of
6 the UDF facilities, those loans that had been
7 obtained by Buffington Land?

8 A. Yeah. Beginning in December of 2012, my father
9 asked me to really get my arms around the loan
10 portfolio. Mr. Starley was leaving the company and
11 my father wanted me to get more involved.

12 Q. Okay. In that position, though, did you
13 actually, like, I don't want to say learn the
14 different terms, but the different interest rates
15 and all the different lending that was involved by
16 UDF --

17 A. I did.

18 Q. -- entities?

19 A. Yes, I did.

20 Q. Okay. Once you started saying, basically, the
21 books and the lending -- the agreements that had
22 been reached prior to that, what observations, if
23 any, did you make about Buffington Land's ability to
24 repay the loans at the terms that they had?

25 A. Well, I was -- I was really confused and trying

1 to get a better understanding of all of it, because
2 what I could see, that they had refinanced
3 approximately \$60,000,000 into facilities that had a
4 blended interest rate of about 19 percent per annum.

5 Q. I'm going to stop you there real quick.

6 A. Yeah.

7 Q. Explain what 19 percent -- a blended interest
8 rate of 19 percent, explain that to us.

9 A. There was a UDF I facility that had a
10 30 percent interest rate.

11 Q. Did you say 30?

12 A. Thirty.

13 Q. Okay.

14 A. There was \$19,000,000 that was refinanced into
15 that facility. And then there's a facility with UDF
16 III at 15 percent and that was \$40,000,000. So the
17 two of those worked out to an average rate of
18 19 percent.

19 Q. Okay. And so seeing that, what was involved
20 with those, did you ever try to have a conversation
21 with any of the defendants in this case about
22 concerns you had with Buffington, and I'm talking
23 early on, with Buffington's ability to repay?

24 THE COURT: Hang on a second.

25 MR.STEPHENS: Your Honor, I'm going to

1 object under 401 and 403, and I also have a concern
2 about the instructive amendment.

3 THE COURT: I didn't hear you.

4 MR.STEPHENS: About the instructive
5 amendment.

6 THE COURT: Overruled.

7 You can answer.

8 THE WITNESS: Yes. I think it was
9 January of 2013, Mr. Wissink was meeting with my
10 father and happened to step out in the hall as I was
11 passing by. I told him that my father asked me to
12 get my arms around it, and I was in the early stages
13 of that, but it was pretty clear that we needed to
14 have a conversation about the different strategies
15 to figure out how we were going to repay everything.
16 And Mr. Wissink's response was that that
17 conversation was long overdue.

18 (BY MS. EGGERS:)

19 Q. Now, once you became the vice president, took
20 on that position, did you have any interactions or
21 frequent, infrequent interactions with either
22 Brandon Jester or a guy by the name of Jeff
23 Gilpatrick?

24 A. Yes, I did. Starting about that same time, so
25 it would have been in about December of 2012 and

1 continuing weekly thereafter, we would have one
2 meeting in person and one meeting by phone, myself,
3 and James Dorney, typically, with Mr. Jester, prior
4 to Mr. Gilpatrick becoming a part of UDF. And after
5 he joined UDF, it was Mr. Jester and Mr. Gilpatrick.

6 Q. And do you see in the courtroom today the
7 individual that you know by the name of Brandon
8 Jester?

9 A. Yes, I do.

10 Q. If you would please point to him and identify a
11 article of clothing?

12 A. Actually, there's Brandon right over there.
13 Dark suit.

14 MS. EGGERS: Your Honor, if the record
15 would reflect Mr. Buffington has pointed to the
16 defendant, Brandon Jester.

17 THE COURT: Mr. Jester, yes.

18 (BY MS. EGGERS:)

19 Q. Now, you said that y'all you would have weekly
20 meetings or have bi-weekly meetings, once over the
21 phone and then one once in person.

22 Just generally describe for us what
23 the purpose of those meetings were, and what you
24 would discuss, and who else was in attendance.

25 A. James Dorney and myself typically. The purpose

1 of the meetings was to go through the entire
2 portfolio to talk about status of development,
3 status of entitlement, projects that we were looking
4 at and doing due diligence on. Projects that they
5 had asked us to take a look at. Just really a very
6 detailed review of everything.

7 Q. Did you ever talk -- I mean, you've mentioned
8 that conversation you had with Mr. Wissink in the
9 hallway, did you ever notify Mr. Jester, the
10 defendant in this case, that you had concerns about
11 the ability for Buffington to be able to repay the
12 loan?

13 A. It was kind of a constant running conversation
14 that we were always trying to come up with ideas,
15 could we perhaps get a reduction of the principal or
16 interest, or have the interest rate reduced from a
17 higher rate to a very low rate, different
18 strategies. The answer was always, well, we'll have
19 to get with Mr. Wissink and get back to you.

20 Q. Okay. Let me ask you this. You mentioned UDF
21 I and UDF III. Was there a loan or loans ever
22 obtained by Buffington from UDF IV?

23 A. Yes, beginning in, I believe, 2012.

24 Q. And did that have -- what approximately was the
25 interest rate for the UDF IV loan?

1 A. 13 percent with one point origination. So we
2 thought of it as a 14 percent rate.

3 Q. So 14 as compared to 15 percent and the
4 30 percent on UDF I; is that correct?

5 A. That's correct.

6 Q. And just generally, the business that
7 Buffington had, had there been any agreement as to
8 UDF paying for overhead?

9 Allowing y'all to have draws to pay for
10 overhead?

11 A. So the way that the loans worked until about
12 August -- well, excuse me, let me start over.

13 I'm sorry, could you repeat the question?

14 Q. Was there any type of agreement, at any point,
15 where Buffington could request draws on the loans in
16 order to fund your actual overhead, like, to keep
17 the lights on, pay employees, that type of thing?

18 A. Thank you.

19 So what I meant to say was that we had a
20 release price associated with the collateral that
21 had liens on it. When the lots were sold, the
22 agreement had been that 90 percent of the remaining
23 dollars would go towards paying down the loan
24 facilities and 10 percent would be allowed to be
25 retained by Buffington Land in order to fund

1 overhead.

2 But then that arrangement changed where they
3 would -- wanted 100 percent of the release price.
4 And so then there was no more money to fund
5 overhead.

6 Q. And so, where were y'all coming up with money
7 to pay the overhead if you weren't able to take
8 draws to get access to that money?

9 The release price, you weren't getting that
10 10 percent back?

11 A. Yeah. So from August of '13, really continuing
12 until things went an entirely different direction,
13 until September of '14, my father was having to fund
14 that personally.

15 Q. You said your father was having to fund that?

16 A. Yes.

17 Q. Now, in your position as vice president, did
18 you ever make any observations about draws that were
19 not being -- when I say draws, I mean requests for
20 money to be pulled out on the loan -- did you ever
21 make any observations about draws being initiated,
22 not by Buffington, but rather by the folks over at
23 UDF?

24 A. Yes. It was brought to my attention at some
25 point by our accounting people that they were having

1 some problems and that the balances, loan balances
2 shown on our internal accounting was not matching up
3 with the monthly loan statements that we were
4 receiving from UDF.

5 I recall one example there was about a million
6 and a half dollar discrepancy. That UDF statement
7 was showing about a million and a half dollars we
8 were owed. So we inquired to try to figure out what
9 was going on. What we were told is that they were
10 prefunding.

11 That it was something that we should be happy
12 about. It was for our benefit, because it was
13 refinancing more expensive debt at 19 percent into a
14 UDF IV facility at 14 percent. Therefore, we were
15 lowering our costs of funds, saving money.

16 Q. Who told you that?

17 A. Mr. Jester.

18 Q. Did you have any discussions with Mr. Jester
19 whether you did or did not want those prefunding
20 events to continue?

21 A. Yes. We asked that they not do that. That it
22 was creating a lot of confusion, a lot of problems.
23 That we philosophically thought it was better to pay
24 a lower interest rate, but they were doing so
25 without our consent.

1 The response to that was, well, Tom and Patrick
2 had already signed a document saying they could use
3 certain types of advances, and they could use these
4 advances as part of this.

5 Q. Did you ultimately find out that some type of
6 document had been executed that allowed the lender
7 to initiate advances like were being done?

8 A. Yes, there was a document to that effect.

9 Q. Was there ever occasion where you were asked to
10 back date any documents by anyone at UDF?

11 A. Yes. Mr. Jester had talked to me, called me,
12 and said that they had done a prefunding some six
13 weeks prior and that would I be willing to sign a
14 consent back dated to the time of the funding.

15 Q. What did you tell Defendant Jester?

16 A. I told him, no, that we didn't want them to do
17 that in the first place. We certainly weren't going
18 to back date a consent.

19 Q. Now, you said these weekly meetings via
20 telephone and in person, that initially it was
21 Defendant Jester, and then when Mr. Gilpatrick came
22 on board at UDF he started attending the meetings as
23 well?

24 A. That's correct.

25 Q. During any of these weekly meetings was there

1 ever an occasion when somebody, other than those two
2 men, also showed up?

3 A. September 3rd, 2014, we were expecting to have
4 our normal weekly meeting with Mr. Jester and
5 Gilpatrick and Mr. Wissink and Mr. Greenlaw walked
6 in with him.

7 Q. Tell us about what happened at that meeting
8 when Defendants Wissink and Greenlaw walked in?

9 A. So we didn't have our normal meeting. Really,
10 it more kind of fell to Mr. Greenlaw. He was
11 explaining to us that they had come up with the
12 answer to giving us back for overhead funding and,
13 you know, creating a path to repayment on all these
14 facilities.

15 Q. Explain what he told you.

16 A. So what he told us is that they were in the
17 process of starting a new fund which was going to be
18 called UDF V, and that we would need to form a new
19 entity which was being referred to as Buffington
20 Land II. And that that entity would be owned by my
21 father, but almost in name only. That there would
22 be a to-be-determined third-party designee that UDF
23 would put in place to be able to make all decisions,
24 except for maybe bankruptcy, would be reserved for
25 my father, in that entity.

1 And this entity would need to take out UDF V
2 loans, and that the interest rate would be the same
3 as UDF IV. And that it would be for acquiring and
4 developing properties all over the state of Texas in
5 support of a home building company they had just
6 bought and their home builder clients. And that we
7 needed to be on board and ready to go. That they
8 expected to start doing this within 30 to 60 days.

9 Q. Do for me a favor, if you would just keep your
10 mic right in front of your face, they're
11 directional. So when do you that, we lose you.

12 A. I apologize.

13 Q. That's okay.

14 So do you see the individual that you know by
15 the name of Hollis Greenlaw in the courtroom today
16 that made this pitch to you and Mr. Dorney?

17 A. I do.

18 Q. If you would please point to him and identify
19 an article of clothing?

20 A. Dark suit.

21 MS. EGGERS: Your Honor, if the record
22 would reflect Mr. Buffington's pointing to the
23 defendant, Hollis Greenlaw.

24 THE COURT: Yes.

25

1 (BY MS. EGGERS:)

2 Q. And so you said that this meeting was on
3 September 3rd; is that correct?

4 A. September 3rd, 2014.

5 Q. Now, did you ask -- Defendant Greenlaw and
6 Mr. Wissink and you said Mr. Jester and Gilpatrick
7 were there as well; is that correct?

8 A. That's correct.

9 Q. Did you ask about trying to, you know, this is
10 going back to writing down the principal or changing
11 the interest rate on that UDF I and UDF III loans?

12 A. Yes. After he laid out this path to repayment,
13 I went back to that and asked if we could do those
14 kinds of things. And he definitively said, no, that
15 his path, his plan was the only plan. That we
16 weren't going to be able to do any of those other
17 things.

18 Q. Was that the first time you had actually heard
19 from the mouths of somebody at UDF that they would
20 never be writing down the interest or the principal
21 or reducing down the interest?

22 A. Yeah. To the best of my knowledge, that was
23 the first definitive statement that I heard on it.

24 Q. What about, you had said earlier that they had
25 stopped funding overhead, that 90/10 percent, was

1 there any discussion about whether or not y'all
2 would be able to get overhead funded again?

3 A. Yes. This plan that was being laid out by
4 Mr. Greenlaw would allow us to get back to overhead
5 funding.

6 Q. Now, you said Mr. Dorney was there with you on
7 the Buffington side; is that correct?

8 A. Yes.

9 Q. Was your father, Thomas Buffington, there?

10 A. He was not.

11 Q. So what did you say? Yes? No? What?

12 A. We said we would have to visit with Tom and
13 that we'd get back to them.

14 Q. And did you do that?

15 Did you visit with your father?

16 A. On approximately September the 8th, we had --
17 Mr. Dorney and I had a conversation with my father.
18 And then we relayed the details of that conversation
19 to Mr. Gilpatrick and Mr. Jester on September 11th.

20 Q. Was that over the telephone or in person when
21 you relayed it to Defendant Jester and
22 Mr. Gilpatrick?

23 A. My recollection it was on the phone with me and
24 James and my father and Brandon and Jeff.

25 Q. Now, so we're talking September time frame, did

1 you, during that September time frame, did you send
2 any letters to the folks at UDF about what was going
3 on or anything like that?

4 A. Yes. So after we had the conversation, we let
5 them know on the 11th that we were refusing the
6 Buffington Land II, UDF V plan, and that we needed
7 to unwind the relationship, whatever that looked
8 like. We needed to start figuring that out.

9 So on the 24th of September, when we hadn't
10 heard anything back, I sent a letter to UDF.

11 MS. EGGERS: Your Honor, at this time I
12 would ask to introduce government's Exhibit 123.

13 THE COURT: All right.

14 MR. ANSLEY: No objection.

15 THE COURT: 123 will be admitted.

16 (Exhibit 123 was admitted into evidence.)

17 (BY MS. EGGERS:)

18 Q. So who did you send the letter to?

19 And I'm going to enlarge it, Mr. Buffington.

20 Who did you email the letter to?

21 A. To Ben Wissink with a copy to Melissa
22 Youngblood.

23 Q. And who was Melissa Youngblood?

24 A. She was an attorney that worked for UDF.

25 Q. And attached is there a copy of the letter that

1 you sent to them?

2 A. Yes, that is the letter.

3 Q. And what is the regarding section of the
4 letter?

5 A. UDF advances for overhead and management fees.

6 Q. Okay. And just the first paragraph. This
7 exhibit will be in evidence, Government's Exhibit
8 123, but if you would please read aloud that.

9 A. This letter is written on behalf of Buffington
10 Land Group, Limited; Buffington Land, Limited; and
11 Buffington Land Development, LLC, and their
12 respective --

13 Q. Slow down just a little bit.

14 A. Oh, sorry.

15 Q. The lady in front of you has to type it down.

16 A. Oh, I'm so sorry.

17 Q. 12 keys for the whole alphabet. So slow down.

18 A. I didn't want to bore anybody.

19 Okay. And their respective subsidiary
20 entities.

21 As you know from our conversations over the
22 last several months, we are becoming increasingly
23 concerned about UDF, United Development Funding,
24 LLP; United Development Funding III, LP; United
25 Development Funding IV, and their applicable lender

1 assignee affiliates, collectively referred to as the
2 UDF Group, in particular with respect to UDF Group's
3 failure to respond to our request to advance funds
4 for budgeted overhead obligations.

5 Q. Now, this is on September 24th, this whole
6 letter will be in, this is in follow up to that
7 conversation you said that y'all had over the phone;
8 is that correct?

9 A. That's correct.

10 Q. After that September 24th letter was written,
11 were you contacted or was there another meeting with
12 Defendant Greenlaw involved?

13 A. Yes. Contemporaneously with their receipt of
14 the letter, I was contacted by Melissa Youngblood
15 and attorneys representing us and UDF counsel began
16 to negotiate what was called a prenegotiation
17 agreement in anticipation of a meeting.

18 Q. Explain to me, what is a prenegotiation?

19 A. It was basically a confidentiality agreement.
20 It's an agreement with the government to
21 confidentiality of the parties in the meeting that
22 we were going to have to talk about the loan
23 facility.

24 Q. And so was there a second meeting with
25 Defendant Greenlaw present?

1 A. Yes. On October 17th at our offices, there was
2 a meeting with myself, my father, Mr. Greenlaw,
3 Mr. Wissink, and Mr. Jester, to the best of my
4 recollection.

5 Q. I don't think I asked you this earlier. Do you
6 see the man that you know by the name of Benjamin
7 Wissink, do you see him in court today?

8 A. Yes, I do. Right there.

9 Q. If you would just describe what color tie or
10 something he has on?

11 A. Mr. Wissink has on a yellow tie.

12 MR. LEWIS: We will stipulate to the
13 identification.

14 THE COURT: Okay. Thank you.

15 MS. EGGERS: Thank you.

16 (BY MS. EGGERS:)

17 Q. Tell us about this meeting. Now your dad is
18 present, you're there, your father's present?

19 A. Right.

20 Q. Tell us about it.

21 A. My understanding was that, since my dad had not
22 been at the September 3rd meeting, Mr. Greenlaw felt
23 that it would be helpful for him to come back into
24 town and sit down and actually explain the UDF V,
25 Buffington Land II path to the repayment that they

1 wanted us to go down.

2 Q. And did he describe it?

3 A. He did. I mean, he began, I think very
4 animated, and really just explaining that it was
5 this great thing that they had figured out. That it
6 was going to allow us to get our overhead funded
7 again. And that we should be throwing rose petals
8 at his feet, it was such a great idea.

9 Q. He said, "rose petals at his feet"?

10 A. That's what I recall.

11 Q. And that's who? Which of the men that was in
12 the meeting?

13 A. Mr. Greenlaw.

14 Q. Okay. And go ahead and describe for us or tell
15 members of the jury what he said this new path to
16 repayment was so y'all could get your overhead
17 funded?

18 A. Well, it's what they had laid out in the
19 September 3rd meeting, more or less. That we would
20 form a new entity. And this entity would be the
21 land development arm all over the state. That we
22 would take out loans with UDF V and that would allow
23 us to do more deals and also to refinance UDF IV and
24 UDF III and UDF I debt.

25 Q. Did he say anything about the SEC or SEC

1 approval or anything?

2 A. He said they had already received SEC approval
3 and they expected to be ready to go within 30 to 60
4 days.

5 Q. And what about talking about any other folks?

6 Were any other folks already on board?

7 Did he mention anything like that?

8 A. He mentioned that other builders had already
9 said, yes. That everybody -- the train was moving
10 and we needed to jump on.

11 Q. Okay. Did you question Defendant Greenlaw
12 about this repayment?

13 A. Yeah, I did. It was just myself and my father
14 in the room. I couldn't see how it could possibly
15 be a path to repayment. The interest rate for UDF V
16 was the same as UDF IV.

17 Q. Let me stop you. Again, what was the interest
18 rate for UDF IV?

19 A. The 13 plus one or 14.

20 Q. And Defendant Greenlaw told you it was going to
21 be the same interest rate for UDF V?

22 A. That's correct.

23 Q. Okay. So did you question him about that?

24 A. Well, yes. So I had a really hard time seeing
25 how that was going to get us there. And as he had,

1 you know, already told us on September 3rd, that
2 they were not going to do any write-downs of
3 principal or interest or change the interest rate or
4 do anything like that, and so I couldn't imagine how
5 it could possibly be a path to repayment.

6 Q. And what did you say to him?

7 A. So I asked him if he knew how much interest
8 accrued every month on our facility. He didn't
9 respond to that. So I said, you know, our
10 calculation is it's about two and a half million
11 dollars a month in interest.

12 Q. Two and a half million?

13 A. 2.5.

14 Q. And did you question him?

15 A. And so, I said, so I don't see how it's a path
16 to repayment. And he said, well, they tell me it
17 is.

18 Q. And who was the "they" he was referring to in
19 the room?

20 A. He was pointing down to the row of people on
21 his side, Mr. Wissink and Mr. Jester.

22 Q. Now, did y'all say, yes, we'll do it? We will
23 refinance everything? We will change the entity?

24 MR. LEWIS: I'm going to object to the
25 form of the question, please.

1 THE COURT: I will sustain everything
2 after "did y'all say yes."

3 (BY MS. EGGERS:)

4 Q. Did y'all say yes?

5 A. No.

6 Q. What did y'all say?

7 A. My father said, we're not interested in that.
8 We want to wind down the relationship. We need to
9 go ahead and wrap this up.

10 Q. And when Defendant Greenlaw was told no, what
11 did he say in response?

12 A. He was -- the mood changed pretty quickly. He
13 seemed to be pretty upset. He said to my dad, so
14 you're telling me to go F myself? You're telling me
15 you're not going to pay your F'ing loans?

16 Q. Did he use just the letter f or did he use the
17 expletive?

18 A. No, he used the expletive.

19 Q. How did it go from there?

20 A. My father said, no, that's not what I'm saying.
21 What I'm saying is we need to unwind the
22 relationship. And that was pretty much the end of
23 the meeting. They kind of left unhappy.

24 Q. After that meeting did you send any letters to
25 document what had occurred?

1 A. Yeah. I believe it was October 23rd I sent an
2 email to Mr. Wissink just following up on that
3 meeting, asking if they had put together any
4 proposal for the wind out. He responded, I believe
5 on the next day, on the 24th, to let me know that
6 they were working on it.

7 MS. EGGERS: Your Honor, at this time I
8 would ask to introduce Government Exhibits 124A and
9 124B.

10 MR. PELLETIER: No, objection, your Honor.

11 THE COURT: Okay. They will be admitted.

12 (Exhibits 124A and 124B were admitted into
13 evidence.)

14 (BY MS. EGGERS:)

15 Q. You said again that meeting -- that second
16 meeting, the second Austin meeting was October 22nd;
17 is that correct?

18 A. Yes, that's correct.

19 Q. And this is the email that you sent subsequent
20 to that October 27th meeting?

21 A. Yes, it is.

22 Q. And the subject, does it say, follow up to
23 meeting?

24 A. Follow up to meeting 10-17, Buffington Land and
25 UDF matters.

1 Q. And the second paragraph that begins with UDF
2 proposed?

3 A. UDF proposed a continuation of finance,
4 development, and disposition of Buffington Land's
5 portfolio of assets using UDF V as a financing
6 vehicle.

7 Tom rejected that proposal as being
8 inconsistent with his intent to end his ongoing
9 management of Buffington Land, but wanted to do so
10 without creating any issues or problems to your
11 proposed UDF V program.

12 Do you want me to continue?

13 Q. Yes.

14 A. Tom suggested UDF take over, through whatever
15 entity is selected, the ownership of Buffington Land
16 entity, directly or indirectly, so UDF may carry out
17 the ongoing land development and disposition goals
18 on its own terms. Tom's proposal included a release
19 of his guaranty.

20 Q. Now, that was on, you said, what date again?

21 A. October 22nd, 2014.

22 Q. And hold on one second, please.

23 A. Sorry, that was my blue mark.

24 Q. Let's go to -- was there a response email, you
25 said?

1 A. Yes. It was the following day, on
2 October 23rd.

3 Q. So we can stay in government's Exhibit 124B,
4 your email; is that correct?

5 A. I'm sorry?

6 Q. We can see right here on the screen 124B, page
7 two, we can see your email; is that correct?

8 A. That is correct. That is my email.

9 Q. And then we will go to the first page.

10 And what did Defendant Wissink write
11 back on October 23rd?

12 A. On October 23rd, Mr. Wissink wrote: We are
13 working on a proposed resolution to Buffington Land.
14 We will be in touch the next few days to have
15 further discussions with Tom and/or yourself.

16 In our meeting, you referenced a
17 package to market and sell Buffington Homes. Could
18 you provide me with a copy of that package?

19 Q. And then, did you respond as well?

20 A. I did.

21 Q. And?

22 A. I responded that same day, it looks like,
23 October 23rd.

24 Q. I'm not going to ask you to read that because
25 this will be in evidence, government's Exhibit 124B.

1 A. All right.

2 Q. Now, that day, how did the meeting end?

3 The October 17th, I didn't ask you
4 that.

5 You talked about the response that
6 Defendant Greenlaw had.

7 A. It ended very quickly after the exchange
8 between my father and Mr. Greenlaw. We made it
9 clear that we weren't going to do what they
10 proposed, and Mr. Greenlaw was unhappy about it.
11 They pretty much just got up and left.

12 MS. EGGERS: If I may have one moment,
13 your Honor?

14 THE COURT: Yes.

15 MS. EGGERS: Nothing further at this time,
16 your Honor.

17 THE COURT: Okay. Ladies and gentlemen,
18 why don't we go ahead and take our lunch break.
19 Because of the COVID, the judiciary has got more
20 money to help with jury trials. And so what I've
21 been doing is using some of that money to buy lunch
22 for the jury. There are sandwiches back in the jury
23 room for you all to have for your lunch.

24 If you don't like sandwiches or you
25 don't like these sandwiches and you want to go

1 somewhere else, that's fine. You're not held
2 hostage in the jury room. But those sandwiches are
3 there for you to have over the lunchtime. That
4 keeps you from having to wander around downtown
5 trying to find a place to eat that you might like.
6 There's not a lot of places on this end of downtown.
7 So I think it's just a good use to have that all
8 available to you.

9 We will take about an hour break. We
10 will start up at about 2:00. So either eat these
11 sandwiches or go get you something. Please try to
12 be back. We can't get started unless all of you are
13 available to be in the jury box at the same time.

14 As I told you already, the more
15 you're in the jury box, the more you're hearing
16 testimony, the more efficient the case is going to
17 be presented. So please try to be back on time.

18 You're not going to be coming in and
19 out of these doors anymore. You're going to be
20 coming in and out of the jury room, which is
21 actually up a flight of stairs and behind us here.
22 And so you will be coming to and from the third
23 floor, going forward now that you are in your role
24 as the jury in this case.

25 So please remember my instructions.

1 Please have a good lunch and we will see you back in
2 about an hour.

3 (The lunch recess was had at 12:54 p.m.)

4 THE COURT SECURITY OFFICER: All rise.

5 (The jurors entered the courtroom.)

6 THE COURT: Okay. Please be seated.

7 Ready?

8 MR. ANSLEY: Yes, your Honor. Thank you.

9 CROSS-EXAMINATION

10 BY MR. ANSLEY:

11 Q. Mr. Buffington, I want to talk to you about
12 some of the issues that covered in your direct which
13 include whether or not UDF was paying overhead for
14 Buffington.

15 Do you recall that testimony on direct?

16 A. I do.

17 Q. The reality is UDF continued paying overhead
18 for you through September of 2014? Is that true?

19 A. I'm sorry. Is that a question?

20 Q. Yes.

21 A. No, I believe what I testified to was that in
22 August of '13 that they changed the amount of the
23 partial release and thereby we didn't have funds
24 available for overhead.

25 Q. But the expectation that Buffington had was

1 that they would -- UDF would continue paying
2 overhead through fall of 2014?

3 A. From the time that the release price was
4 changed, we asked, in our weekly meetings
5 continually that we figure out a way to pay the
6 overhead, but it was not --

7 THE COURT: What's the expectation is what
8 he's asking.

9 THE WITNESS: The expectation was that we
10 would figure out a way to get them -- the parties
11 were working together to try to come up with a way
12 to do that.

13 BY MR. ANSLEY:

14 Q. And you continued to ask UDF, you being
15 Buffington the company, for overhead payments
16 through fall of 2014?

17 A. Yes. Absolutely.

18 Q. And would it surprise if UDF paid overhead
19 payments to Buffington between August of '13 and
20 September of '14 of about \$1.2 million?

21 A. Yes. I'm not aware of that.

22 Q. And do you recall telling the Grand Jury that
23 UDF stopped paying overhead in August of 2013?

24 A. That is my recollection.

25 Q. And yet you would be -- wouldn't be surprised

1 if the -- if overhead payments continued even after
2 that date?

3 A. Yes, that is not -- I wasn't aware of that.
4 I'm not familiar with that.

5 Q. Who is James Dorney?

6 A. He was the president of the company -- the
7 president of Buffington Land.

8 Q. Was he president during the time period you
9 were at Buffington before as well?

10 A. Yes.

11 Q. Did James Dorney in fact ask UDF in the fall of
12 '14 where things stand on paying current overhead
13 draws, isn't that true?

14 A. Well, you would have to did Mr. Dorney.

15 I know that we were constantly asking UDF when
16 they were going to catch up with the overhead that
17 wasn't being paid.

18 THE COURT: And your next question.

19 MS. EGGERS: Yes, your Honor.

20 Can I refresh the witness, your Honor?

21 BY MS. EGGERS:

22 Q. Just read that to yourself.

23 A. All right.

24 Q. Does that refresh you, sir, as to whether or
25 not Buffington, the entity, expected UDF to continue

1 paying current overhead draws in September of 2014?

2 A. Yes. Evidently I was copied on that email.

3 Q. I'm sorry. I misunderstood you.

4 A. I said evidently --

5 THE COURT: Hold on a second.

6 Does that refresh your memory?

7 THE WITNESS: Yes, sir, it does.

8 THE COURT: Okay.

9 Go ahead and ask your next question.

10 BY MR. ANSLEY:

11 Q. Having been refreshed, Buffington expected and
12 asked UDF to pay overhead, its overhead expenses
13 through September 2014?

14 A. Yes. That is what that email from James --

15 Q. That's not evidence.

16 THE COURT: Okay. He's answered it.

17 MR. ANSLEY: Thank you, sir.

18 BY MR. ANSLEY:

19 Q. That is inconsistent with what you told the
20 Grand Jury, isn't it? You told the Grand Jury that
21 overhead payments stopped in August of 2013.

22 A. Well, overhead payments -- the email is asking
23 for them to catch up on back overhead that hadn't
24 been paid.

25 Q. And current overhead payments, too?

1 A. Sure.

2 Q. Yes?

3 A. But they weren't being paid.

4 Q. We're talking about current overhead payments
5 in September of '14 after your grand jury testimony
6 was they stopped in August of '13.

7 Isn't that true?

8 A. Yes, that's correct.

9 Q. If we can pull up Government's Exhibit 123.
10 That's in evidence.

11 Mr. Buffington, that's that September 24, 2014
12 letter you spoke about during your direct.

13 Do you recall that?

14 A. Yes, I do.

15 Q. And in that letter, I guess -- well, is that
16 the email or the letter?

17 A. I believe it was an attachment to that email.

18 Q. Okay. Let's go to the first page. There we
19 go.

20 This, sir, this letter, I know your father who
21 has now passed, he worked at Buffington as well.

22 This letter is signed by you; is that correct?

23 A. Yes, that is correct.

24 Q. This letter, looking at the first page, we see
25 what the topic of the letter is, specifically UDF

1 advances for overhead and management fees. And
2 again this is September 2014, correct?

3 A. Yes. That is correct.

4 Q. After you told the Grand Jury overhead payments
5 stopped in August of '13, right?

6 A. I don't believe I'm being inconsistent.
7 Overhead payments did stop in August of '13. We
8 continued to ask for overhead to be paid after
9 August of '13.

10 Q. Okay. We'll round that out later.

11 And what we don't see in this letter, as I read
12 it, is anything about you telling UDF -- this letter
13 is addressed to UDF -- you telling UDF that
14 Buffington cannot pay the UDF loan anymore.

15 A. Well, the -- this letter is directly related to
16 UDF advances for overhead management fees.

17 Q. It certainly is.

18 But I understood your direct testimony to be
19 that you had been telling my client and others, Mr.
20 Jester and others at UDF for, as I took it, months,
21 that Buffington couldn't pay.

22 MS. EGGERS: I'm going object to the form
23 of the question. The counsel is testifying.

24 THE COURT: Overruled.

25

1 BY MR. ANSLEY:

2 Q. Did you tell me Mr. Jester or others at UDF
3 that Buffington could not repay the UDF III loan?

4 A. We were continuing to try to come up with
5 different ways to repay the loans up until September
6 the 3rd of '14, when we heard definitively that UDF
7 would not be able willing to agree to any kind of
8 pay down or forgiveness of principal or interest.

9 At that time, we determined that we would not
10 be able to pay the loans and we asked to wind down.

11 Q. And I'm not clear what time, when you say "that
12 time," when did you determine --

13 A. September 3rd of 2014.

14 Q. September 3rd of 2014?

15 A. Yes, sir.

16 Q. And in this letter, do we see anything in this
17 letter, post dating that September 24th, anything in
18 this two-page letter that makes reference to being
19 unable to make good on the loan you had with UDF?

20 A. No. This letter was specifically directed
21 towards the conversation about overhead management
22 fees. It was a follow up to the meeting on the 11th
23 where we let them know that we would not be doing
24 the Buffington Land 2 and UDF V, and we hadn't heard
25 anything back.

1 Q. Let's ask it this way: The subject of that
2 letter is overhead?

3 A. Correct.

4 Q. And management fees?

5 A. Yes, sir.

6 Q. The subject of the letter is not restructuring
7 the loan?

8 A. Correct.

9 Q. The subject of the letter is not interest rate
10 forgiveness, correct?

11 A. Yes, sir.

12 Q. It is not reduction of the principal amount, is
13 it?

14 A. That's correct.

15 Q. It is not, we need to modify the loan, is it?

16 A. It is not.

17 Q. If I read through the body of the letter, I'm
18 not going to see any of those words in the letter,
19 am I?

20 A. No, this letter does not address any of those
21 issues.

22 Q. In fact, if you look at the bottom of page 1
23 and the top of page 2, we see reference to -- well,
24 let me back up.

25 The letter is, in summary, is complaining about

1 supposedly not paying overhead that's impacting
2 Buffington's ability to continue to be -- continue
3 to do business, is that fair?

4 A. Absolutely.

5 Q. And if we look at the top of page 4 -- I'm
6 sorry, page 2 -- we see that failure that's
7 happening could materially impact the projections
8 for repayment of the loans made by the UDF funds.

9 Do you see that?

10 A. Yes.

11 Q. So we're in late September 2014, right?

12 A. Right.

13 Q. After you determined, you said a few minutes
14 ago, on September 3rd, you can't repay the loan,
15 correct?

16 A. Right.

17 Q. And you're saying three weeks later, that if
18 overhead is not paid, that could affect our
19 projections on repayment of those loans.

20 And that sentence even says 2015, doesn't it?

21 A. Yeah. I think you have to understand the
22 context about repayments. It's not repaying the
23 loan to zero. It's that we need to continue to have
24 staff and employees, if we're going to run a
25 business that is going to sell lots that is then

1 going to make payments on loans.

2 Q. But this points out inability, potentially, to
3 meet projections on paying these loans, repaying
4 these loans into the next calendar year, 2015?

5 A. Yes.

6 At this point we hadn't agreed on any kind of a
7 wind down plan or structure and we were still in
8 business. But if we can't pay our people, we are
9 not going to be in business very long.

10 Q. And there's nothing in here otherwise that
11 talks about we can't repay, period?

12 A. That's correct.

13 Q. Instead it talks about we've got projections on
14 repaying it in 2015?

15 A. Yes. That is what it says.

16 Q. And we don't have anything -- let's talk about
17 what's in writing and what's not in writing.

18 Did you communicate with UDF by email?

19 A. There are, I'm sure, 10s of thousands of
20 emails.

21 Q. Sure. Email communications, phone calls,
22 meetings you talked about on direct as well, right?

23 A. That's right. Yes, sir.

24 Q. Would it surprise you if there is not a single
25 written communication out there that talks about --

1 MS. ROMERO: Objection, your Honor,
2 counsel is testifying.

3 THE COURT: Do you know of any
4 communication out there on the subject in email
5 form?

6 THE WITNESS: Other than oral?

7 THE COURT: In email form.

8 THE WITNESS: In email form? No, sir.

9 BY MR. ANSLEY:

10 Q. Did you ever send any sort of -- let's talk
11 first about a restructuring memo to UDF about
12 restructuring the loan.

13 That's a yes or no.

14 A. I guess no.

15 Q. Are you aware that there was a restructuring
16 memo that was prepared by Buffington back in 2010
17 about restructuring loans, then, of 1 and 3 through
18 the use of the UDF IV? Are you aware of that
19 restructuring memo?

20 A. I'm not aware of that specific memo, but I'm
21 certainly aware that UDF IV was part of -- partly
22 intended to restructure 1 and 3.

23 Q. But you're also aware that there's a process of
24 restructuring a multimillion-dollar loan, right?

25 A. Yes.

1 Q. And that certainly, in that instance, that
2 includes putting together a packet, a proposal of
3 how that can be restructured?

4 A. That's correct.

5 Q. And in your case, it involves talking to
6 somebody once, twice, whatever, with no written
7 communications whatsoever. We have nothing in
8 writing, that you're aware of, that supports the
9 idea that you or anybody else at Buffington said
10 that it could not repay the loan before
11 October 2014?

12 A. We met with them in person. Once we were on
13 the phone with him, also once a week, we had lots of
14 opportunities to talk about these issues. I mean,
15 there would be no email follow up on certain things
16 because we're talking so much.

17 Q. You consistently emailed UDF regarding multiple
18 topics, including overhead?

19 A. Sure.

20 Q. And yet there are no emails at all about the
21 topic of --

22 MS. EGGERS: Objection, asked and
23 answered.

24 THE COURT: Sustained.

25

1 BY MR. ANSLEY:

2 Q. And we have meeting agendas for those meetings
3 with UDF, don't we?

4 A. Yes, we do.

5 Q. And those meeting agendas are utterly silent
6 about the topic of "we can't repay the loan."

7 A. Meeting agendas were to go through all of the
8 different projects and potential projects.

9 Q. Did you understand my question?

10 A. I did.

11 Q. Those meeting agendas were silent as to any
12 statements or information about "we can cannot repay
13 the loan"?

14 A. I -- I -- that would -- that would seem to make
15 sense. I don't recall every meeting agenda to know
16 that for sure, but that sounds right.

17 Q. And the agenda meetings, of course, they are
18 intended to cover the topics addressed during these
19 meetings with UDF representatives? That's the whole
20 point of an agenda of a meeting?

21 A. That's correct.

22 Q. I want to talk to you about the advance
23 requests that were submitted to UDF as well.

24 You talked briefly about those on direct.

25 How late, to the extent that you remember, how

1 late into the game would Buffington submit advance
2 requests to UDF?

3 A. I don't know that I can give you a date.

4 Q. They were submitted into at least September of
5 2014, weren't they?

6 A. Yeah. I would imagine that's probably right.
7 Up until the point that we knew that we weren't
8 going to be able to move forward.

9 Q. And you signed off on advance requests to UDF
10 in August of 2014?

11 A. I take your word for it. I very rarely signed
12 the advance requests.

13 Q. I can show it to you, if you need me to.

14 A. No, I believe you.

15 Q. And then you know, James, of course, you're
16 vice president of UDF -- I'm sorry -- of Buffington
17 in fall of '14; is that right?

18 A. That's correct.

19 Q. And general counsel, too?

20 A. No. I resigned all of my legal positions
21 December 12th of '12.

22 Q. Okay. I'm sorry.

23 So in the fall of '14, you're VP. You're aware
24 that advance requests are being submitted, the one
25 you signed off on in September -- August of '14.

1 There were later advance requests submitted in
2 September of 2014.

3 Do you agree with me?

4 A. I'm -- I'm aware that we made a number of
5 advance requests. It was part of the process with
6 UDF.

7 Q. And those advance requests contain, as you know
8 from signing some, certain certifications regarding
9 the status of Buffington and its solvency, don't
10 they?

11 A. I suppose so.

12 MR. ANSLEY: Can I approach, your Honor,
13 to refresh?

14 BY MR. ANSLEY:

15 Q. Sir, I'm handing you what's marked as
16 Government's Exhibit 2078.

17 Without telling people, everybody what it is,
18 do you recognize that document?

19 A. Yes, I do.

20 Q. I'm sorry. Defendant's Exhibit 2078. I
21 apologize.

22 A. Yes, I recognize this document.

23 Q. What is that document?

24 A. It is an advance request.

25 Q. And is that signed by you on the second page?

1 Multiple times?

2 A. Yes, it is.

3 Q. That advance request is directed to whom?

4 A. To United Development Funding III.

5 Q. The date on that is what?

6 A. It says August 13th, 2014.

7 MR. ANSLEY: The defense moves for Defense
8 Exhibit 2078, your Honor.

9 MS. EGGERS: No objection.

10 THE COURT: That that will be admitted.

11 (The referred-to document was admitted in
12 Evidence as Defense Exhibit 2078.)

13 BY MR. ANSLEY:

14 Q. We can pull up -- and you will see it, too,
15 electronically, sir, pull up the first page of that
16 draw request.

17 So this is the one you signed in August of '14.
18 That red box, if we could blow that up a little bit.

19 We spoke, Mr. Buffington, about certain
20 certifications you couldn't recall the details of.

21 Do you see that now?

22 A. I do.

23 Q. And what -- in summary, those certifications
24 are representing the financial -- my words, not
25 those, correct me if I'm wrong, but the financial

1 status of Buffington and its solvency?

2 A. Yes. More or less.

3 I mean, it's talking about, in the first one,
4 reps and warranties made by borrower and borrower
5 purchasing the note, and each other loan document
6 are true and correct in all material respects.

7 So they continue to be true and correct.

8 Q. And those loan documents, without going into
9 the details, those loan documents make
10 representations, many of which include covenants
11 about the solvency of Buffington?

12 A. That's correct.

13 Q. And this certifies that those things have not
14 changed, those representations have been -- are
15 unchanged in August of '14?

16 A. Each of those loans had financial
17 certifications attached to them with our balance
18 sheet. And so the balance sheets were always
19 accurate and would show exactly the situation with
20 the consolidated group and remained to be the
21 situation during the certifications.

22 Q. Okay. So you were certifying here the
23 representations in those loan documents, whatever
24 their dates are remain accurate?

25 A. I mean, I would have to go back and look at

1 them.

2 Q. No, you're saying --

3 THE COURT: Hold on. Don't talk over each
4 other. Wait for him to finish.

5 THE WITNESS: I'm sorry.

6 BY MR. ANSLEY:

7 Q. You're saying here in summary that the
8 certifications -- the representations in the loan
9 documents are still accurate?

10 A. Yes. That is what this certification says.

11 MR. ANSLEY: Can we --

12 May I approach, your Honor?

13 BY MR. ANSLEY:

14 Q. Sir, I handed you what's marked as Defense
15 Exhibit 8335.

16 Do you recognize what that document?

17 A. This is an advance request.

18 Q. Dated?

19 A. September 9, 2014.

20 Q. Signed by whom on page 2?

21 A. Mr. Dorney.

22 Q. Mr. Dorney was what of UDF --I'm sorry --
23 Buffington in September '14?

24 A. President.

25 Q. You recognize the signature, don't you?

1 A. I do.

2 Q. And attached to that following pages we have a
3 number of documents relating to various projects
4 that you guys were working on with UDF?

5 A. Yes. That's correct.

6 MR. ANSLEY: Defense moves for admission
7 of Defense Exhibit 8305.

8 MS. EGGERS: No objection, your Honor.

9 THE WITNESS: 8305 will be admitted.

10 (The referred-to document was admitted in
11 Evidence as Defense Exhibit 8305.)

12 BY MR. ANSLEY:

13 Q. Quickly, sir, we will look at the same exact,
14 same certifications at the bottom of page 1 of this
15 exhibit as well.

16 And if we can zero in on that same section.

17 Would you argue with me if I said these
18 certifications in Section 3 are identical to those
19 that we just looked at the previous one for August?

20 A. They do appear to be identical.

21 Q. And then there was also an advance request
22 submitted in -- by Buffington in August of 2014 as
23 well, wasn't there?

24 I'm sorry. October. I think I said August.

25 Is that what you've handed me?

1 Q. No, sir.

2 MR. ANSLEY: Can I approach, your Honor?

3 BY MR. ANSLEY:

4 Q. Do you recognize that document, sir?

5 A. Yes. It's an advance request.

6 Q. For what month?

7 A. This would be UDF III.

8 Q. For what month?

9 A. It is dated October the 9th of 2014.

10 Q. Do you see Mr. Dorney's signatures again
11 multiple times on page 2?

12 A. I do.

13 MR. ANSLEY: The defense moves for
14 admission of -- what number does that say? The
15 exhibit number on that?

16 THE WITNESS: Oh, yeah. It looks like
17 DX 2079.

18 MR. ANSLEY: Defense 2079, your Honor.

19 THE COURT: It will be admitted.

20 (The referred-to document was admitted
21 into Evidence as Defense Exhibit 2079.)

22 BY MR. ANSLEY:

23 Q. Quickly, the same certifications, if we can
24 pull those up on that page.

25 A. Yes. It appears to be the same certifications,

1 same language.

2 Q. I've got one more to ask you about as far as
3 advance requests.

4 Are you aware that Buffington submitted an
5 advance request on November 10, 2014, to UDF?

6 Do you know?

7 A. I assume you've got another exhibit back there,
8 so, yes.

9 Q. Do you know one way or the other?

10 A. No, I don't know that for sure.

11 Q. All right.

12 MR. ANSLEY: Can I approach, your Honor?

13 BY MR. ANSLEY:

14 Q. Do you recognize that, sir?

15 A. Yes. It is an advance request. It is dated
16 November the 10th of 2014. It is a request made on
17 United Development Funding III.

18 Q. Who signed it?

19 A. It appears to be Mr. Dorney's signature.

20 Q. Page 1, how much was that advance request for?

21 A. Principal amount. Advance request, \$27,294.19.

22 MR. ANSLEY: Defense moves for admission
23 of Defense 8306, your Honor.

24 MS. EGGERS: No objection.

25 THE COURT: 8306 will be admitted.

1 (The referred-to document was admitted in
2 Evidence as Defense Exhibit 8306.)

3 BY MR. ANSLEY:

4 Q. Let's blow up this one, let's blow up that same
5 section.

6 What is missing there on page 1?

7 A. I don't see -- at least on that page, the same
8 certifications.

9 Q. Do you know who removed those certifications?

10 A. No, I do not.

11 Q. Do you know why they were removed?

12 A. No, I don't.

13 Q. Whose document is this, do you know whose form
14 this document is?

15 A. Well, it would be a lender-agreed form, so I
16 would say it's UDF's form.

17 Q. So if Buffington changed that, that would be
18 Buffington changing a UDF form?

19 MS. EGGERS: Objection, your Honor. He's
20 already said he doesn't know who did --

21 THE COURT: Sustained.

22 BY MR. ANSLEY:

23 Q. After this one in November of 2014, if you
24 know, were there any additional draw requests that
25 Buffington submitted to UDF after that date?

1 A. I don't know.

2 Q. As I understand your testimony, you're telling
3 the jury that, in so many words, that Buffington
4 claimed it could not repaint the UDF loan, is that a
5 fair summary?

6 A. In full.

7 Q. In full.

8 Did -- are you aware of loan applications and
9 guaranty agreements that were signed by Buffington
10 in the fall of 2014 that addressed Buffington's
11 financial solvency?

12 A. I'm not aware of any loans that were taken out
13 after September of '14. There were no new loans,
14 there were no new modifications of loans.

15 Q. What about a guaranty agreement on the BLG Hoss
16 LLC?

17 A. I don't know the date of that.

18 Q. Are you aware of that agreement?

19 A. Yes, I am aware of a commercial lender who made
20 a loan and then UDF was in a second position.

21 Q. Are you aware of that agreement was dated
22 September 18, 2014?

23 A. I'm not aware of that.

24 Q. I'm sorry?

25 A. I'm not aware of that.

1 MR. ANSLEY: Can I approach, your Honor?

2 BY MR. ANSLEY

3 Q. It is marked as Defense 8300.

4 Do you recognize that document?

5 A. I do.

6 Q. What is that?

7 A. It is a guaranty agreement between Buffington
8 Capital Holdings and Washington Federal.

9 Q. And is Buffington Capital Holdings --

10 MS. EGGERS: Your Honor, I'm going to
11 object, if we can approach.

12 (The following proceedings were had at
13 sidebar without being reported:)

14 BY MR. ANSLEY:

15 Q. Do you recall having a conversation with Jeff
16 Gilpatrick in June of 2020 regarding the amount owed
17 to UDF?

18 A. I having a phone conversation can Jeff
19 Gilpatrick.

20 Q. Did you recall telling Mr. Gilpatrick during
21 that conversation that you had every intention and
22 belief that the UDF loan you had could be repaid?

23 A. I think -- there was some conditional language
24 around that. I don't recall it exactly.

25 MR. ANSLEY: May I approach, your Honor?

1 That's marked Defense Exhibit 29.

2 THE WITNESS: I'm sorry?

3 MR. ANSLEY: Can I approach one more time,
4 Judge?

5 That is transcripts. 8160, I'm sorry,
6 sir. I meant Defense 8160.

7 Your Honor, this is an impeachment
8 exhibit.

9 MS. EGGERS: Your Honor, I would object to
10 the use of this exhibit, and it has been --

11 THE COURT: To the use of this exhibit and
12 then you said something --

13 MS. EGGERS: And the manner that it's been
14 provided to the Government, your Honor. It's a
15 transcript. The Government doesn't have the actual
16 call itself. This was just recently provided to the
17 Government and we don't have the actual original
18 recording.

19 THE COURT: Okay.

20 So, sir, you will have to -- I'm going to
21 allow them to show you this document. If you
22 believe it's true, then you that need to say it is
23 true. If you don't know, you need to say you don't
24 know. But you need to answer it honestly as to your
25 personal knowledge.

1 THE WITNESS: All right.

2 If there was a question, I need you to
3 repeat it.

4 THE COURT: He's going to ask one. I just
5 wanted to lay that sort of ground work.

6 MR. ANSLEY: I'm sorry, your Honor.

7 THE COURT: Because I was not aware of
8 what it was.

9 MR. ANSLEY: I have a copy for the Court.

10 THE COURT: Got it.

11 BY MR. ANSLEY:

12 Q. Sir, if I can turn your attention to page 2 of
13 this exhibit. If you can just kind of look at
14 page 2, around line 13 and read it to yourself.

15 Tell me when you're finished.

16 A. I've read it.

17 Q. This is a conversation between you and Jeff
18 Gilpatrick, who we talked about a few minutes ago,
19 isn't it?

20 A. Yes. As I recall, it was a Saturday morning --

21 THE COURT: Hold on. Hold on.

22 BY MR. ANSLEY:

23 Q. That's okay.

24 THE COURT: Just only answer the question
25 asked.

1 THE WITNESS: Okay, I'm sorry.

2 BY MR. ANSLEY:

3 Q. You told the Court and Jury a few minutes ago
4 you spoke to Mr. Gilpatrick?

5 A. That's correct.

6 Q. In June of 2020?

7 A. Yes.

8 Q. And this appears to be that phone call, doesn't
9 it?

10 A. I wasn't aware it was being recorded. This
11 appears to be a transcript from that call.

12 Q. Okay. But you talked -- okay.

13 A. I did talk to him.

14 Q. And do you see there where it refers to
15 Mr. Gilpatrick saying, in so many words, that, "I
16 mean, when you guys signed those draws with the
17 certifications --"

18 THE COURT: Hold on.

19 MR. ANSLEY: Yes.

20 I will withdraw the question, your Honor.

21 THE COURT: Yes, okay.

22 BY MR. ANSLEY:

23 Q. Having read this, sir, does this refresh your
24 recollection as whether or not you told
25 Mr. Gilpatrick in June of 2020 that you believed you

1 could repay the loan?

2 A. I'm responding to his statement.

3 THE COURT: No. Hold on. So you've read
4 the portion that he's told you. And so the question
5 to you is, does that refresh your recollection about
6 whether you told this individual you could repay the
7 loan. It either does or it doesn't refresh your
8 recollection as to whether you said that.

9 And that's the question before you.

10 THE WITNESS: It does not refresh my
11 recollection as to whether or not we could repay the
12 loan.

13 BY MR. ANSLEY:

14 Q. And the question is whether it refreshes you on
15 whether you told Mr. Gilpatrick that you believed
16 you could repay the UDF loan.

17 A. I'm sorry. Ask that again.

18 Q. Yes.

19 Does it refresh your recollection as to whether
20 or not you told Jeff Gilpatrick in June of 2020 that
21 you believed that Buffington could repay its loan?

22 A. It does not refresh my recollection of that.

23 Q. So you're denying that you told him that?

24 A. I'm not denying that. It refreshes my
25 recollection that he asked me if the certifications

1 we signed, that we believed at the time that we
2 signed certain certifications that we could repay
3 the loan.

4 Q. And those certifications continued to be signed
5 off until -- through what date?

6 A. I don't know. We just went through them.

7 Q. At least October 2014?

8 A. That sounds right.

9 Q. And you submitted draw requests through at
10 least November of 2014, correct? We looked at that
11 one, too?

12 A. Correct.

13 Q. That's the one that had the certifications
14 removed from it.

15 Do you recall that?

16 A. I recall reviewing that document with you.

17 Q. And you talked, I think, towards the beginning
18 of your direct examination about a conversation you
19 had, I think it was in September of 2014, with
20 certain representatives, a phone call with certain
21 representatives for UDF.

22 Do you recall that?

23 A. I do.

24 Q. During that conversation, who was present on
25 that phone call?

1 A. If you're referring to the September 11, 2014
2 conversation, that was myself; my father, Tom
3 Buffington; and James Dorney. And we were on the
4 phone with Brandon Jester and Jeff Gilpatrick.

5 Q. And at that point was -- I apologize for
6 asking, but did your father speak during that call
7 about health concerns that he had?

8 A. Not that I recall.

9 Q. Not that you recall?

10 A. No, sir.

11 Q. Was there anything said during that phone call
12 about an orderly transition that he wanted to, he
13 being your father, he wanted to discontinue
14 operations, in a slow and orderly step away from the
15 business?

16 A. Certainly on the September 11th call we were
17 saying we wanted to have an orderly wind down of
18 business operations with them.

19 Q. And explain to the Jury what an orderly wind
20 down of operations with UDF would be? What that
21 looks like.

22 A. Compromise the settlement agreement to dispose
23 of the loans, to transfer assets, transfer entities,
24 do whatever we could just to wrap it all up.

25 Q. To what, to wrap it up?

1 A. To wrap it up.

2 Q. How long, it may be hard to say, how long -- an
3 orderly wind down, to me, suggests it's going to
4 take some time, right?

5 A. Yes. I mean, we would have liked it to be
6 expedited, but it does often take a lot of time.

7 Q. And an orderly wind down is going to take, I
8 would assume, at least a period of months?

9 A. I would assume that's right.

10 Q. If not longer than that?

11 A. Correct.

12 Q. An orderly wind down is not consistent with,
13 we're done, we can no longer fund things, we are
14 insolvent?

15 A. I would say that it's consistent that when we
16 want to wind down the relationship, we are no longer
17 moving forward in the relationship. We're done.

18 Q. You aren't moving forward but, and I didn't
19 mean to cut your answer off --

20 A. No, that was it.

21 Q. That's not consistent though, an orderly wind
22 down with we are going no cease operations with you
23 now because we cannot repay the loans? Those are
24 two different things, aren't they?

25 A. To literally just cease operations would have

1 been even more damaging and destructive to the
2 facilities.

3 You need to work together to wind it down or
4 you're not going to be able to repay as much as
5 possible.

6 Q. And that takes time, doesn't it?

7 A. Yes, sir.

8 Q. That can take, like you said, months if not a
9 year or more? Is that correct?

10 A. That would be why you continue to submit an
11 advance requests, you have to continue to operate
12 the business even though you're trying to wind it
13 down.

14 Q. And when between, in fact, when did Buffington
15 stop doing business with UDF?

16 A. The final separation had an effective date of
17 December 31st, 2016.

18 Q. A couple of years later?

19 A. Yes, sir.

20 MR. ANSLEY: Thank you, sir.

21 I pass the witness.

22 CROSS-EXAMINATION

23 BY MR. PELLETIER:

24 Q. My name is Paul Pelletier; I represent Hollis
25 Greenlaw.

1 Buffington Homes was engaged with UDF for quite
2 a long period of time, correct?

3 A. Not Buffington Homes.

4 Q. Buffington Land?

5 A. Yes, sir.

6 Q. And Buffington Land bought, acquired land and
7 built developments with the money they borrowed from
8 UDF all over the Austin area, correct?

9 A. That's correct.

10 Q. Hundreds of homes?

11 A. Well, Land didn't actually build any homes.

12 Q. Land doesn't build homes?

13 A. No.

14 Q. Buffington Land develops and then it sells to
15 Buffington Homes and they build homes?

16 A. Yes. Buffington Land develops lots and they
17 sell to Buffington Homes and other builders.

18 Q. Hundreds and hundreds of homes, correct?

19 A. Yes, sir.

20 Q. More than \$100 million?

21 A. Of -- of --

22 Q. Loans. To Buffington Land. So they could do
23 this, correct?

24 A. I think that's right.

25 Q. Yeah.

1 And during that period of time, you said
2 towards the end of 2013 or '14, that you wanted to
3 reduce at least the interest on the loan, correct?

4 A. That conversation first came up in January of
5 '13 with Mr. Wissink. But, yes, we continued to
6 talk about it.

7 Q. Right.

8 And you wanted to reduce that interest because
9 you thought it was a good idea for Buffington Land,
10 correct?

11 A. 19 percent compounding interest is really tough
12 to deal with.

13 Q. And the one time that Buffington -- excuse
14 me -- that UDF paid down a 19 percent loan with a
15 14 percent loan for you, you told them, don't do it
16 because it's creating problems in our accounting,
17 right?

18 A. There were many, many times that they
19 pre-funded UDF IV loans to pay down I and III loans.

20 Q. So they're paying down a 19 percent loan with a
21 14 percent loan, pursuant to contract, and you're
22 telling them don't do it because it's bothering your
23 accounting department?

24 A. No. I think actually what we said is don't do
25 it without our consent, don't do it without our

1 knowledge.

2 Q. You said that the contract -- you're a lawyer,
3 right? You're before's lawyer?

4 A. It depends when you are talking about.

5 Q. At some point in time --

6 A. Yeah.

7 Q. -- during the relationship, you had reviewed
8 these loan documents, you knew that they had the
9 right to do that, you said they did.

10 A. Okay.

11 Q. All right.

12 So they're doing it, they're saving you money
13 by reducing the very interest you want to reduce,
14 and you tell your accounting department, don't do
15 it -- you tell them not to do because it is an
16 accounting hassle?

17 A. We were in favor of saving money; we just
18 didn't want them to do it without our consent.

19 MR. PELLETIER: I have no further
20 questions, your Honor.

21 MR. LEWIS: Thank you, Judge. No
22 questions.

23 MR. STEPHENS: No, your Honor.

24

25

1 REDIRECT EXAMINATION

2 BY MS. EGGERS:

3 Q. Mr. Buffington, those advance requests that are
4 in front of you. What are the amounts on them?

5 A. Exhibit 8305 is in the amount of 36,317, I
6 believe.

7 Q. 36,000 and some change?

8 A. Yes.

9 Q. Okay.

10 What's another one?

11 A. Defendants' Exhibit 2079 is 41,407 and change.

12 Q. 41,000?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. Exhibit 8306, we may have already covered that,
16 but 27,294, I believe.

17 Q. 27,000?

18 A. 27,000, yes.

19 Those are the ones that I have.

20 Q. And those were so y'all could pay the bills, to
21 pay the vendors or whomever who had done work?

22 A. That's correct. People that were owed money
23 for work done.

24 Q. Mr. Ansley was asking about what was or was not
25 said and when they stopped paying advances and they

1 didn't.

2 This letter that you wrote in September of
3 2014, does this letter address the fact that there
4 were advances and overhead management fees that had
5 not been paid?

6 A. Yes.

7 Q. And is that the purpose of this letter here?

8 A. Yes, it is.

9 Q. And you said something a moment ago, you said
10 compounding interest.

11 Explain to us what compounding interest is to
12 you.

13 A. You know, we're quite familiar with the concept
14 in our credit cards. But interest that continues to
15 accrue and then as the amount climbs with the
16 additional interest added, then interest then also
17 is calculated on that.

18 Q. So you said earlier that the interest accruing
19 with that blended rate was what percentage again?

20 A. 19 percent, UDF I and III.

21 Q. So if you don't pay the \$2.5 million in
22 interest one month, then that gets rolled into the
23 next month and it just keeps compounding on itself?

24 A. That's my understanding.

25 Q. Defense counsel was asking about whether or not

1 you had sent any other communication to point out
2 how dire the situation was.

3 Were there emails where either you or Mr.
4 Dorney were contacting Mr. Gilpatrick asking that
5 they pay advances because y'all needed to be able to
6 pay the workers?

7 A. A number of emails.

8 Q. When all of this was happening, you're seeking
9 an advance request for, I think you said 27,000,
10 30 something thousand and 40 something thousand,
11 were y'all making those interest payments every
12 month of 2.5?

13 A. Interest payments could only be made as lots
14 were sold. So as lots would get sold, money would
15 go to the pay downs on the loans.

16 Q. Towards the interest?

17 A. First interest, then the principal.

18 MS. EGGERS: No further questions at this
19 time, your Honor.

20 MR. ANSLEY: No, your Honor.

21 MR. PELLETIER: No, your Honor.

22 MR. LEWIS: No, sir.

23 MR. STEPHENS: No, your Honor.

24 THE COURT: Okay. You may step down.

25 MS. EGGERS: The Government will call

1 James Dorney.

2 And, your Honor, the Government would ask
3 that the rule of sequestration be invoked.

4 THE COURT: If y'all would look -- would
5 you raise your hand to be sworn.

6 (JAMES DORNEY was duly sworn by the Court}

7 THE COURT: I'm going to let y'all see if
8 you have any witnesses in the courtroom, excuse
9 them, and explain to them what the rule is. And we
10 will try to do it on the fly.

11 MS. EGGERS: The Government had previously
12 notified their witnesses, your Honor.

13 MR. PELLETIER: Your Honor, can we
14 approach on one second about that sequestration?

15 (The following proceedings were had at
16 sidebar without being reported:)

17 DIRECT EXAMINATION

18 BY MS. EGGERS:

19 Q. If you would, sir, please state your name.

20 A. James Dorney.

21 Q. And you are going to have speak up.

22 Mr. Dorney, where do you live? Not your street
23 address, but the general location.

24 A. Austin, Texas.

25 Q. Did you fly up here, Mr. Dorney?

1 A. I did.

2 Q. Did you check your bag or did you carry on?

3 A. I checked it.

4 Q. Did you get your bag when you got to Dallas?

5 Is that why you're wearing jeans to federal court?

6 A. Yes, ma'am. Sorry.

7 Q. Mr. Dorney, let me ask you this: What line of
8 work are you in?

9 A. Real estate development and home building.

10 Q. And approximately how long have you been in
11 that line of work, just approximately?

12 A. Twenty years.

13 Q. And were you previously employed with
14 Buffington Land?

15 A. Yes.

16 Q. And approximately how long were you employed
17 with Buffington Land?

18 A. Thirteen years.

19 Q. So what time frame are we talking about for
20 those 13 years?

21 A. 2008 through recently.

22 Q. And did you work with Thomas Buffington, who is
23 now deceased?

24 A. I did.

25 Q. And what about Blake Buffington, did you also

1 work with Blake Buffington?

2 A. I did.

3 Q. And what was your position with Buffington
4 Land?

5 A. President.

6 Q. Describe for us just generally your duties and
7 responsibilities as president on any given day.

8 A. The entire operations of any land development,
9 acquiring the land, making sure that it was good
10 land that would work, putting the entitlements in
11 place to the city, the county, state, whatever it
12 might be.

13 Working with the civil engineers to do
14 preliminary plans, final plats, construction
15 drawings. And then bidding it out to contractors
16 that would put the streets in and the pipe in the
17 ground and the ponds in the entries and all of the
18 things you -- you would put the lots in the ground
19 for selling to home buyers or homeowners.

20 Q. And over the course of your time with
21 Buffington, did it obtain loans from any of the UDF
22 entities?

23 A. Yes.

24 Q. And who was your primary like weekly contact
25 with at UDF for your engagement with UDF personally?

1 A. It was Brandon Jester.

2 Q. Was there later another individual that you
3 would have meetings with as well?

4 A. Yes. In the -- towards the end, it was Brandon
5 Jester and Jeff Gilpatrick.

6 Q. And these meetings, where would they generally
7 occur, how often were they?

8 A. At the end, they were -- they were very
9 frequent. Normally, we would call it once a week
10 and they would come to our office and our conference
11 room. There were phone calls as well as emails, of
12 course. But they were pretty frequent.

13 Q. And would Mr. Blake Buffington attend those
14 meetings with you?

15 A. At the end, yes, Blake was in those meetings.
16 Blake and I would be in those meetings.

17 Q. Did there come a time in September of 2014 when
18 someone other than Brandon Jester and Mr. Gilpatrick
19 came to the meetings?

20 A. Yes.

21 Q. Okay.

22 And who different, other than those two men
23 came to the weekly meetings?

24 A. Hollis.

25 Q. When you say --

1 A. Hollis Greenlaw --

2 Q. And were you present during the presentation
3 that Defendant Greenlaw gave about moving forward
4 between the two entities?

5 A. I was.

6 Q. And during that meeting, did Mr. Greenlaw
7 say --

8 MR. PELLETIER: Objection, leading.

9 THE COURT: Overruled.

10 BY MS. EGGERS:

11 Q. Did he say that the way to move forward was
12 taking out loans from UDF V, a discussion of UDF V?

13 A. Yes. UDF V was brought up, yes.

14 Q. Now, after that, did you and Mr. Blake
15 Buffington, did y'all talk to Thomas Buffington
16 about this proposal?

17 A. Yes, yes, we always would, yes.

18 Q. Now, leading up to that and prior to that, the
19 relationship that Buffington had with UDF, were
20 y'all ever trying to get advances so that you could
21 pay overhead at UDF?

22 A. Yes.

23 Q. And did there come some point in time when that
24 become difficult for y'all to get actually money to
25 keep the lights on and pay the staff?

1 A. Yes.

2 Q. And were there emails that you had with
3 defendant Jester where you're asking for money to
4 try and do those things?

5 A. Yes.

6 MS. EGGERS: Your Honor, at this time I
7 would ask to introduce Government's Exhibit No. 113.

8 THE COURT: It will be admitted.

9 (The referred-to document was admitted in
10 Evidence as Government's Exhibit 113.)

11 BY MS. EGGERS:

12 Q. This particular -- and it should be showing up
13 on your screen in front of you, Mr. Dorney -- what
14 is the date of this email?

15 A. August 27th, 2013.

16 Q. And what's the subject of it?

17 A. It's overhead.

18 Q. Okay. And what did you -- you wrote it to
19 Mr. Jeff Gilpatrick, is that correct?

20 A. Correct.

21 Q. And what does it say right there?

22 A. Please let me know as soon as you can, we do
23 not have funds to cover the draw. Thanks, Jeff.

24 Q. This was back in August of 2013, is that
25 correct?

1 A. Yes.

2 Q. And then prior to that, were you able to
3 confirm that this would fund? Is that earlier in
4 the email chain?

5 A. Yes. Tuesday, August 27th at 6:15 in 2013,
6 were you able to confirm this would fund?

7 MS. EGGERS: Your Honor, at this time I
8 would ask to introduce Government's Exhibit 114.

9 THE COURT: 114?

10 MS. EGGERS: Yes, sir. Sorry.

11 THE COURT: That will be admitted.

12 (The referred-to document was admitted in
13 Evidence as Government's Exhibit 114.)

14 BY MS. EGGERS:

15 Q. Mr. Dorney, looking at this one, who was Skye
16 Payette?

17 A. Skye was the controller from the Buffington
18 side.

19 Q. And this looks as though it's from Skye Payette
20 to Jeff Gilpatrick and cc'ing you, is that correct?

21 A. Yes.

22 Q. And says, OH draw, July and August.
23 What does "OH" mean?

24 A. Overhead draw.

25 Q. And this is an email in September of 2013?

1 A. Yes.

2 Q. Does it talk about your next payroll, when it's
3 due and when the funds will be deducted?

4 A. It does.

5 Q. And the sentence below that, does it say the
6 July and August OH, overhead draws, are still
7 outstanding?

8 A. Yes.

9 Q. And after that, what did you write?

10 A. Please help.

11 MS. EGGERS: Your Honor, at this time I
12 would ask to introduce Government's Exhibit 115.

13 THE COURT: That will be admitted.

14 (The referred-to document was admitted in
15 Evidence as Government's Exhibit 115.)

16 BY MS. EGGERS:

17 Q. Now, this particular chain is a little bit of a
18 longer chain. You said Ms. Payette, she was there
19 at Buffington, is that correct?

20 A. Correct.

21 Q. And does this appear to be an email chain that
22 starts in October of 2013?

23 A. Yes, it does.

24 Q. And it's invoices from Land to Buffington for
25 reimbursement for some types of invoices for 37

1 grand, is that right?

2 A. Correct.

3 Q. That was written to a Cheryl Cox, is that
4 right?

5 A. Correct.

6 Q. And the Defendant Jester says: "See below and
7 attached, need to get this factored into the OH
8 budget."

9 Do you see that?

10 A. I do.

11 Q. And then -- defendant, or excuse me, Jeff
12 Gilpatrick says: Can you send over the updated
13 budget through the end of '14, is that correct?

14 A. Correct.

15 Q. Was there a man by the name of Kyle at
16 Buffington at the time?

17 A. Kyle Mentor.

18 Q. And it looks like you wrote: Already gave Kyle
19 all he needs to update the model and asked him to do
20 ASAP, is that correct?

21 A. Yes.

22 Q. And then Defendant Jester, the formatting page
23 of the email or what have you, writes: "James, what
24 does M mean when you say I have no answers? Have no
25 answers for what?"

1 Was the Defendant Jester, was that someone that
2 y'all spoke about requesting overhead funding? That
3 y'all spoke to --

4 A. Yes, I would have spoke to Brandon asking him
5 for it.

6 Q. And what did you write back in October of 2013?

7 A. No answers equal no cash.

8 Q. What does that mean?

9 A. We didn't have any money.

10 MS. EGGERS: Your Honor, at this time I'd
11 ask to introduce Government's Exhibit 116.

12 THE COURT: That will be admitted.

13 (The referred-to document was admitted in
14 Evidence as Plaintiff's Exhibit 116.)

15 BY MS. EGGERS:

16 Q. This is a different chain. We're still in
17 2013.

18 What is the subject of this one on page 3 of
19 116?

20 A. I see an email from Monday, November 11,
21 overhead.

22 Q. I'm sorry. November 11?

23 A. That's okay. It's overhead, subject.

24 Q. And does Jeff Gilpatrick asks: "Are you going
25 to need overhead funding this week, if so, why and

1 how much?"

2 A. He asked when and how much, yes.

3 Q. And then Ms. Payette writes back: "We will need
4 overhead funding."

5 Was this something constant y'all were having
6 to go back to them and ask for money just to meet
7 payroll?

8 A. Yes.

9 Q. Does Ms. Payette write on November 11 with the
10 time of 11:54: "Would you mind clarifying? We
11 submitted the October overhead draw, if that can get
12 funded then that gets us through this upcoming bay
13 roll as a Band-aid"?

14 A. She wrote that.

15 Q. She used the word "band-aid"?

16 A. She did.

17 Q. Then on November 20th, does she write another
18 email to Jeff Gilpatrick: I just wanted to follow
19 up on the October funding request?

20 A. She did.

21 Q. Let's go --

22 MS. EGGERS: At this time, your Honor, I
23 would ask to introduce Government's Exhibit 126.

24 THE COURT: That will be admitted.

25

1 (The referred-to document was admitted in
2 Evidence as Government's Exhibit 126.)

3 BY MS. EGGERS:

4 Q. And this particular email, was it the bottom of
5 it, is it from Jeff Gilpatrick to you to Blake
6 Buffington and then Brandon Jester is cc'd?

7 A. It is.

8 Q. And what is the date of this email?

9 A. March the 5th, 2014.

10 Q. And does Jeff Gilpatrick write: We didn't
11 discuss this on the call, Blake and I discussed
12 briefly on Monday, the main UDF III loan is maturing
13 at the end of the month. We need a roll up pro
14 forma of the Buffington portfolio as it stands today
15 to see where the balances stand.

16 What is a roll up pro forma?

17 A. I'm not the finance guy, but basically you
18 would take every single individual project and all
19 of the cash flows associated with it, the revenue
20 and the costs to get to a bottom line distributable
21 cash number.

22 And you would put them all together and roll
23 them up into one big answer.

24 Q. Now, there's a Matt -- I'm sorry. There is a
25 Matt that's mentioned here. Who is Matt? Or who

1 was Matt? Right here, it says from you to Jeff:

2 "Matt will be back in the office."

3 A. That would have been -- at that time Matt
4 Parker.

5 Q. Okay. And would he have been the person to do
6 that type of --

7 A. Yes, he's definitely the finance guy.

8 Q. And this is somebody at UDF asking for this
9 information from your folks, is that correct?

10 A. That's correct.

11 Q. And then on March 7th, 2014, what did Defendant
12 Jester write?

13 A. We need this by the end of next week.

14 Q. And did you say, okay, thanks?

15 A. I did.

16 Q. So that was on March 7.

17 MS. EGGERS: Your Honor, at this time I
18 would ask to introduce Government's Exhibit 127.

19 THE COURT: That will be admitted.

20 (The referred-to document was admitted in
21 Evidence as Government's Exhibit 127.)

22 BY MS. EGGERS:

23 Q. Let's go here. Is this an email on March 12,
24 2014?

25 A. Right.

1 Q. Is that correct?

2 A. Yes. Yes, ma'am, it is. March 12.

3 Q. Is that from Defendant Jester to you and
4 Mr. Buffington?

5 A. It is to Blake and myself.

6 Q. And was he following up on the status of the
7 updated cash flow for Buffington Land 1 and 3?

8 A. He was.

9 Q. And did he say: "I need to make sure we
10 receive this on Friday as previously requested," and
11 then read that next sentence.

12 A. "Our auditors have now requested the same
13 information and I'm obligated to provide this on
14 Monday morning. Please ensure that we receive this
15 information on time."

16 Q. And did you write that, that Matt, which would
17 have been Matt Parker, that he was working on it?

18 A. I said Matt has been working on it all day,
19 it's a big project.

20 MS. EGGERS: Your Honor, at this time I
21 would ask to introduce Government --

22 BY MS. EGGERS:

23 Q. And that again, the date of that was March 12,
24 is that correct?

25 A. The date that I said Matt has been working on

1 it, yes, ma'am, March 12 at 3:30. 3:23 in the
2 afternoon.

3 MS. EGGERS: Let's go to Government's
4 Exhibit 118.

5 Your Honor, at this time I would ask to
6 introduce Government's Exhibit 118?

7 THE COURT: That will be admitted.

8 (The referred-to document was admitted in
9 Evidence as Government's Exhibit 118.)

10 BY MS. EGGERS:

11 Q. Is the subject of this another email requesting
12 overhead draws? Now for March?

13 A. It is.

14 Q. And did you write, on March 25th: Please do
15 what you can, I do not have an answer to cover
16 overhead at this point?

17 A. I did.

18 MS. EGGERS: Your Honor, I would ask to
19 introduce Government's Exhibit 487A and 487B.

20 THE COURT: That will be admitted.

21 (The referred-to document was admitted in
22 Evidence as Government's Exhibit 487A and
23 487B.)

24 BY MS. EGGERS:

25 Q. Looking at this email, Mr. Dorney, what is the

1 date of this email?

2 A. March 31st, 2014. Monday.

3 Q. And if you would, please read what Jeff
4 Gilpatrick wrote to you and Mr. Dorney?

5 A. "Skye/Matt, based on the portfolio models, we
6 have made the advances listed below to pay down the
7 before UDF/UDF III loans to continue to lower your
8 cost of funds. Please send draw requests for these
9 advances that were made today. \$500,000 in Crystal
10 Springs."

11 Q. I'm going to stop you there. And the next
12 amount and the name of the development?

13 A. 324,000, in Mason Park. 500,000 at Park at
14 Brushy Creek.

15 Q. So this is from Jeff Gilpatrick telling y'all
16 to take advances on loans?

17 A. It is.

18 MS. EGGERS: Let's go to 487B.

19 BY MS. EGGERS:

20 Q. And I will flip through these.

21 Was that something that you would sign, advance
22 requests?

23 A. I would.

24 Q. And this is an advance request where your
25 lender is telling you to take the advance request,

1 is that correct?

2 A. It's related to those three dollar amounts,
3 yes.

4 Q. We could flip through, but this exhibit will be
5 in evidence. There were multiple, I think three
6 developments that were listed, is that correct?

7 A. There were three projects in that email, yes.

8 Q. We can see there's a second one there.
9 And then a third one there, is that correct?

10 A. Correct.

11 MS. EGGERS: Your Honor, at this time I
12 would ask to introduce Government's Exhibit 125.

13 THE COURT: Exhibit 125 will be admitted.

14 (The referred-to document was admitted in
15 Evidence as Government's Exhibit 125.)

16 BY MS. EGGERS:

17 Q. Is this an email in April of 2014 from
18 April 4th -- excuse me -- 2014, same chain, the
19 portfolio advances where Jeff Gilpatrick is saying,
20 I need these?

21 A. It is. April the 14th from Jeff. I need
22 these.

23 I might have misspoke. It was April 4 of 2014.

24 MS. EGGERS: Your Honor, at this time I
25 would ask to introduce Government's Exhibit 119?

1 THE COURT: It will be admitted.

2 (The referred-to document was admitted in
3 Evidence as Government's Exhibit 119.)

4 BY MS. EGGERS:

5 Q. And is this an email chain where Ms. Laytham?

6 A. Leightman.

7 Q. Leightman is making a request about open CT
8 Corp. invoices that Buffington had?

9 A. It is.

10 MS. EGGERS: Your Honor, at this time I
11 would ask to introduce Government's Exhibit 120.

12 THE COURT: 120 will be admitted.

13 (The referred-to document was admitted in
14 Evidence as Government's Exhibit 120.)

15 BY MS. EGGERS:

16 Q. And the subject of this email chain, and it's
17 has been a year now, we've been looking at emails,
18 but the subject of this one is vendor checks/July
19 draws?

20 A. It is.

21 Q. What did you write to Jeff Gilpatrick?

22 A. "Jeff, these guys are going to walk the job.
23 Can you find out -- can you fund out a UDF loan
24 facility we have in place?"

25 Q. What does "walk the job" mean?

1 A. You don't pay them, they leave. They'll go do
2 something else.

3 Q. We saw those advance requests a few moments
4 ago --

5 MS. EGGERS: Your Honor, at this time I
6 would ask to introduce -- I'm sorry -- Government's
7 Exhibit 485.

8 THE COURT: 458 will be admitted.

9 (The referred-to document was admitted in
10 Evidence as Government's Exhibit 485.)

11 BY MS. EGGERS

12 Q. We saw those advance requests a moment ago that
13 were attached to an email chain.

14 Do you see this advance request, Mr. Dorney?

15 A. I do.

16 Q. How much is that advance request?

17 A. A million dollars.

18 Q. And is this another example of where the lender
19 is telling y'all to take an advance request?

20 A. Yes.

21 MS. EGGERS: Your Honor, at this time I
22 would ask to introduce Government's Exhibit 121.

23 THE COURT: 121 will be admitted.

24

25

1 (The referred-to document was admitted in
2 Evidence as Government's Exhibit 121.)

3 BY MS. EGGERS:

4 Q. And this -- excuse me -- is this an email from
5 Blake Buffington to Jeff Gilpatrick where you are
6 cc'd?

7 A. It is.

8 Q. And the subject of it, or the regarding
9 section, is it regarding payroll needs?

10 A. It is.

11 Q. Let me ask you this: Was it a constant trying
12 to get money just to make payroll?

13 A. It was.

14 MS. EGGERS: Your Honor, at this time I
15 would ask to introduce Government's Exhibit 122.

16 THE COURT: 122 will be admitted.

17 (The referred-to document was admitted in
18 Evidence as Government's Exhibit 122.)

19 BY MS. EGGERS:

20 Q. And this email chain, what is the subject of
21 this email chain?

22 A. UDF IV overhead funding.

23 MS. EGGERS: May I have one moment, your
24 Honor?

25 No further questions at this time, your

1 Honor.

2 MR. ANSLEY: Yes, your Honor.

3 CROSS-EXAMINATION

4 BY MR. ANSLEY:

5 Q. Good afternoon, Mr. Dorney.

6 A. Good afternoon.

7 Q. If we can pull up Government's Exhibit 115,
8 again, please.

9 And, sir, you just visited with Ms. Eggers
10 about, this is one of the overhead emails that y'all
11 spoke about a moment ago?

12 A. Correct.

13 Q. If we can zero in on -- do you see the middle
14 part of the page, it looks like an email from my
15 client, Brandon Jester?

16 A. I do.

17 Q. Will you read to the jury what -- the paragraph
18 starting also. Read what that paragraph says.

19 A. "Also we funded you guys a great number of UDF
20 I and III draws on Friday, and the reminder will
21 come once I can sit down face-to-face with Ben to
22 review. You guys should have easily been able to
23 cover any overhead obligations with what we funded
24 last week."

25

1 THE COURT: And when you read, be sure
2 you're projecting into that microphone.

3 THE WITNESS: I'm sorry. Yes, sir.

4 BY MR. ANSLEY:

5 Q. Thank you, sir.

6 And to be clear, you, I think you said on
7 direct, you're not a finance guy. At least at
8 Buffington, you were not a finance guy?

9 A. No, I'm operations guy.

10 Q. You are not a finance guy now?

11 A. No.

12 Q. By operations, so how that is different from
13 finance, at a high level?

14 A. You have finance guys who give you the answers
15 as the operator.

16 Q. And you're out there, your job at Buffington,
17 in so many words, was to try to source deals, try to
18 find deals, is that fair?

19 A. That was part of my job.

20 Q. Beyond that, what else?

21 A. Source them, entitle them, develop them,
22 dispose of the assets. Disposition.

23 Q. You went through -- you went through a number
24 of emails on direct regarding overhead, which we
25 just looked at including this one.

1 But paying overhead, that's different from loan
2 draws that are intended to -- intended to help move
3 projects forward that Buffington was working on,
4 those are two different things, aren't they?

5 A. Obviously, yes.

6 Q. So if there's -- whether or not a \$25,000
7 payment is being made for overhead to a contractor,
8 whomever else, that doesn't impact directly whether
9 or not a loan project rather is moving forward,
10 that's -- that's a loan draw as opposed to a purely
11 overhead draw, isn't it?

12 A. You might want to ask that question another way
13 because I think I disagree with you.

14 Q. Well, what we looked at a few minutes ago,
15 those overhead draw emails back and forth, that does
16 not mean that Buffington does not have the funds
17 that it needs to keep pushing the project forward or
18 the projects forward.

19 A. Part of being able to move projects forward at
20 any type of pace is you have to be have people to be
21 able to do it.

22 Q. And also part of it is having access to large
23 sums of capital, large loans, which Buffington was
24 receiving from UDF and UDF I, UDF III, UDF IV?
25 Which you're aware of in your role as operation?

1 A. Whether they received loans?

2 Q. Yes, sir.

3 A. Yes.

4 Q. Isn't it part of your job, what you were
5 doing -- I didn't mean to minimize it -- but part of
6 it was to use those funds received to see what sort
7 of projects you could help source and find, you
8 know, for your employer Buffington?

9 A. Correct.

10 Q. And without those funds received from UDF as a
11 lender, you don't have the ability or, I guess, you
12 wouldn't go out there and try to source those deals,
13 would you, try to find those deals?

14 A. Only what they source of financing.

15 Q. I'm sorry, sir?

16 A. Only what they source of financing would you,
17 in all equity or debt and equity or whatever the
18 structure was.

19 Q. And you worked with UDF and you worked to try
20 to source deals through 2013, is that correct?

21 A. Getting close to 2013, I would say, yes.

22 Q. 2014 as well?

23 A. I was at that point so busy trying to manage
24 the assets that we had to get as much value out of
25 it as I could, we didn't have people really to do

1 it.

2 Q. In looking at Government's Exhibit 487A, if we
3 could pull that up, please, and, Mr. Dorney, that
4 was an email in which you're basically the sum and
5 substance is you're being -- that's UDF initiating a
6 draw request, is that fair to say?

7 A. Correct.

8 Q. And if you don't know this, that is fine, but
9 do you know, are you aware that UDF under its
10 agreements with Buffington has -- they've got the
11 authority to do things just like this, meaning
12 specifically, initiate draw requests like we're
13 looking at here?

14 A. I can speak with 100 percent certainty that
15 that was in the documents. I'm not saying it's not,
16 but I just can't say yes or no.

17 Q. That's outside your flight pattern, is that
18 fair?

19 A. I'm sorry?

20 Q. That's outside your flight pattern as far as
21 operations? That's different -- that's outside of
22 what you're aware of?

23 A. Sure, sure.

24 Q. From a financing standpoint, at least during
25 the time that you were at Buffington, who -- who was

1 or who were the people in charge of financing at
2 Buffington?

3 A. Initially, when I first came over, Patrick
4 Starley.

5 Q. When did Mr. Starley leave?

6 A. I don't want to misspeak. I'm not positive of
7 the exact year. I mean, I can tell you about it,
8 but I don't want to say -- maybe 2009.

9 Q. As far as the issue of --

10 A. Excuse me, not 2009.

11 No, no, no. 2012.

12 Q. Okay. Thank you.

13 And on the -- on the side of things, as far as
14 access to funds, from whether it's UDF or other
15 lenders, that's more in the arm of Patrick Starley
16 and finance as opposed to you on the operational
17 side of things?

18 A. Securing those types of vehicles to fund, yes,
19 absolutely. But when it came to me approving a
20 dollar to spend because the work was done, it was
21 done to satisfaction, then I would be more involved
22 in that. That's more operational.

23 Q. As far as from an operational versus finance
24 side, you had no direct involvement in making
25 payments by Buffington? Whether you're going to pay

1 vendors, for instance, were you involved in that?

2 A. Only on the approval side. Absolutely they
3 would come from -- from our side. But it wasn't me
4 actually handing them a check.

5 Excuse me.

6 Q. And what about the status of payments? Are you
7 keeping up with that operationally, too, or is that
8 more on the finance side?

9 A. You have to know what your budget, actual
10 budget is. So, I mean, whether or not a finance guy
11 does it for you and you review it, I mean, I knew.
12 I knew what our costs were. You have to.

13 Q. You looked a few minutes ago, I think you
14 referred to those pro formas.

15 Let's pull up Government's Exhibit 126, please.

16 Do you see that, sir?

17 A. I do.

18 Q. You if we go to -- that's a request basically
19 to see where, the question is to see what the status
20 or where rather the Buffington loan stands, is that
21 a fair summary of that request?

22 A. It is.

23 Q. And as far as preparing the pro forma,
24 that's -- you had no involvement, if there is one
25 prepared, you had no involvement in that at all?

1 A. I wouldn't have prepared, no, I'm not an Excel
2 guy. Not one you want to use anyway.

3 Q. I'm sorry, sir?

4 A. I'm not an Excel guy so that would have been
5 prepared -- at this time that would have been Matt
6 doing that.

7 Q. So putting the date in that, whether it's a pro
8 forma cash flow analysis, you had no involvement
9 inputting that data together?

10 A. I definitely would know the assumptions that
11 would go in that work, that would make sense that
12 could actually be done in the field.

13 Q. So, operationally, you're inputting your
14 operational knowledge into that --

15 A. Sure.

16 Q. -- and then Excel people --

17 A. Not actually building it.

18 THE COURT: Be sure you let Mr. Ansley
19 finish his question before you answer, so that she
20 can take it down.

21 BY MR. ANSLEY:

22 Q. Tell me again when you started Buffington.

23 A. 2008.

24 Q. 2008.

25 So you're aware, starting in 2008, that

1 Buffington prepared models like that where they
2 would model, you know, what their portfolio looked
3 like, and model projection -- make projections based
4 on those models going forward. You're aware that
5 those -- you didn't create them, but you're aware
6 that those spreadsheets were created going back
7 several years?

8 A. Typically what would be put in place were
9 project level pro fores. You do an individual
10 project, you track it, you make sure it works, and
11 it is doing what you think.

12 So, typically, we had at my level would be
13 project level.

14 Q. Okay.

15 A. Specific communities.

16 Q. Okay. And I want to put a fine point on that
17 because that sounds important.

18 So a project level pro formas, what do you mean
19 by that?

20 A. It deals with a specific community. You have
21 100 acres, you have 1000 homes sites, how much do
22 they cost, how much do you sell them for, so related
23 to a specific community.

24 Q. Okay.

25 So what's the status of that existing project

1 at that point in time?

2 A. Correct.

3 Q. Got it.

4 As opposed to -- well, the only pro formas
5 you're familiar with are those project level pro
6 formas, is that fair?

7 A. Because once I give some feedback on the
8 project level, then whatever they would do with it,
9 they already had the feedback. It's not going to
10 change when you roll 10 of them together, it's going
11 to be the same one by one that aggregated into 10 to
12 give you one big number.

13 Q. And that's at the project level only, correct?

14 A. Correct.

15 Q. How late in the game, as far as Buffington
16 goes, how late in the game did you guys close deals
17 with UDF?

18 A. I can't recall for certain. But the last
19 couple deals we closed, they sputtered, didn't make
20 it to fruition.

21 Q. Did you close deals in 2013?

22 A. The last deals we did were Hawks, whatever year
23 that was, and Crystal Springs, which didn't make it.
24 Closed the land and that was it.

25 And Hawks stalled after one section of being

1 constructed. Those are the last two I recall.

2 Q. Did you closed Gosling in 2013?

3 A. Gosling was down in Houston.

4 Q. I'm sorry?

5 A. Yes, Gosling was down in Houston.

6 Q. Was that closed in 2013, if you know?

7 A. No, I don't know for certain. I don't want to
8 misspeak.

9 Q. Did you close Westpointe in 2013? If you know?

10 A. No, I don't recall a Westpointe.

11 Q. Okay. What about Bratton?

12 A. Bratton was another stalled project.

13 Q. Okay. So that was not closed?

14 A. I don't recall where exactly that one ended up.

15 Q. So that could have closed?

16 A. I don't recall exactly. I don't want to
17 misspeak or mislead anybody.

18 Q. Did Scenic Loop close in 2013?

19 A. Scenic Loop was a deal in San Antonio. Yes.

20 Q. So yes?

21 A. Yes. Assuming it's '13. I can't say for
22 certain, but I think it was.

23 Q. The Park at Brushy Creek, 4A, 4B? Did that
24 close in 2013?

25 A. It closed, but I can't say it's '13. It might

1 have been sooner than that. But, yes, it did close.

2 Q. It could have been, you're not sure?

3 A. It did close.

4 MR. ANSLEY: Okay. Thank you, sir.

5 Pass the witness.

6 THE WITNESS: Thank you.

7 MR. PELLETIER: Briefly, your Honor.

8 CROSS-EXAMINATION

9 BY MR. PELLETIER:

10 Q. Mr. Dorney, my name is Paul Pelletier; I
11 represent Mr. Greenlaw.

12 So you did project-level loans, UDF III -- UDF
13 IV did project-level loans and UDF III made loans
14 and had been making loans to your business
15 enterprises, is that correct?

16 A. UDF III did loan money, yes.

17 Q. Yes.

18 And so when you were just talking with counsel
19 about project-level loans, you also have to
20 determine where your business is going in the
21 future, right? To know whether or not you were
22 going to get loans this month, next month, next
23 year, right?

24 A. Ask your question a different way.

25 Q. Well, in other words, in determining how you're

1 going to run your business, you routinely, every two
2 weeks, look at future projects that you are going to
3 be acquiring or potentially acquiring to put in your
4 portfolio, right? Buffington Land?

5 A. You would always look at projects, not
6 necessarily every two weeks, but as they were
7 available.

8 Q. Right.

9 And so we just talked about several projects
10 that you closed in 2013, right?

11 A. Correct.

12 Q. And that was part of your business, right? You
13 were in Austin, a very vibrant home building market,
14 correct?

15 A. I suppose so.

16 Q. Suppose -- you're not aware that it's the
17 number 1 home building area in the country for
18 almost the past 10 years?

19 A. Totally fine. Yes.

20 Q. Okay.

21 So you said that you had financed some other
22 loans. So other institutions had financed loans,
23 not just UDF, correct?

24 A. I don't recall saying that at this point, but
25 yes, that is the case.

1 Q. You had other banks?

2 A. Yes.

3 Q. And they entered in 2013, 2014, correct?

4 A. We had -- yes.

5 Q. And did you tell any of those other banks that
6 you couldn't pay your UDF loans?

7 A. To directly answer? No.

8 Q. Now --

9 A. However.

10 Q. -- you dealt with Mr. Jester and
11 Mr. Gilpatrick, correct?

12 A. Yes.

13 Q. As a matter of fact, Mr. Gilpatrick worked for
14 you, right?

15 A. He did at one point.

16 Q. Very, very competent fellow, wasn't he?

17 A. Jeff was good.

18 Q. Knew his job?

19 A. He was good at finance, yes.

20 Q. Did it well?

21 A. I would say yes.

22 Q. Honest and straightforward?

23 A. I would say yes.

24 Q. And you would say the same thing about all of
25 the people you worked with at UDF, wouldn't you?

1 A. I wouldn't say they weren't. I wouldn't say
2 they were. I never even thought about it that way.

3 Q. You never thought about it? All right.

4 Now, took -- you talked about getting paid
5 overhead, correct?

6 A. That was a discussion that was had between UDF
7 and Buffington. It wasn't a one-sided discussion.

8 Q. And those were discretionary payments by
9 UDF III, right? You knew they were discretionary,
10 right?

11 A. Everything in the loan is discretionary for a
12 lender.

13 Q. Once they give you the money, they give you the
14 money, right? That's not discretionary. But
15 overhead payments were discretionary, weren't they?

16 A. I don't know how the documents were written.

17 Q. Okay.

18 Now, it became a problem in 2012, when
19 Buffington Land finally gave the general ledger over
20 to UDF, isn't that correct? When -- when it became
21 a problem with the overhead payments? Do you
22 remember that?

23 A. I'm not certain. If you're referencing -- I'm
24 not sure what you're talking about. You have to
25 give me some clarity.

1 Q. Okay. I will give you clarity, if I can.

2 So when you turned your general ledger over to
3 UDF, they learned that Patrick Starley was taking
4 airplane trips to the University of Texas games and
5 billing them to overhead, isn't that correct?

6 A. That -- I know -- I don't know exactly what
7 they saw, but I know they weren't happy. And I know
8 they could understand that.

9 Q. So they weren't happy that their lender was
10 misspending their loan money, right?

11 A. To -- yes.

12 Q. And you knew they had investors and they have
13 fiduciary duties to investors, you know that, right?

14 A. I wasn't doing anything --

15 Q. I'm sorry.

16 A. I don't understand your questions. Why this
17 angle?

18 Q. They have to protect their investor's money,
19 correct?

20 A. Everybody should protect their investors's
21 money.

22 Q. And when they found out that what they believed
23 was Patrick Starley was misspending the overhead,
24 they said, no more, correct?

25 A. I don't know. I wasn't in those conversations.

1 MR. PELLETIER: I have no further
2 questions, your Honor.

3 MR. LEWIS: No, thank you, Judge.

4 MR. STEPHENS: No, sir, your Honor.

5 MS. EGGERS: No redirect, your Honor.

6 THE COURT: Okay. Thank you. You may
7 step down.

8 MS. EGGERS: And if this witness may be
9 released, your Honor.

10 The Government would call Matt Parker.

11 THE COURT: He needs to ...

12 Thank you.

13 THE WITNESS: Thank you, sir.

14 MS. EGGERS: The Government would call
15 Matt Parker.

16 THE COURT: Could you raise your hand to
17 be sworn?

18 (MATT PARKER was duly sworn by the Clerk.)

19 DIRECT EXAMINATION

20 BY MS. EGGERS:

21 Q. Good afternoon.

22 A. Good afternoon.

23 THE COURT: Go ahead and drop the mask.

24 BY MS. EGGERS:

25 Q. If you would, please state your name.

1 A. Matthew Douglas Parker.

2 Q. And, Mr. Parker, don't give us like the street
3 address, where generally do you live?

4 A. Northern California.

5 Q. About how long have you lived in northern
6 California?

7 A. Since January of 2015.

8 Q. And before that, did you live here in Texas?

9 A. Yes.

10 Q. And whereabouts in Texas?

11 A. In Austin.

12 Q. Were you ever employed at, I'll call it the
13 Buffington Land family of businesses or Buffington
14 Group?

15 A. I was.

16 Q. What position did you hold there? And how long
17 were you employed there?

18 A. I was the vice president. I was employed from
19 approximately mid August of 2012 to mid April of
20 2014.

21 Q. And explain to us, what you did in that role as
22 vice president?

23 A. Yes. I did several things. I was -- I did
24 financial modeling. So financial projections for
25 potential acquisitions and underwriting.

1 I did some portfolio-level cash flows, so
2 basically looking at these subdivisions that
3 Buffington owned and projecting what revenue we
4 would receive when we sold the lots to home
5 builders.

6 Q. What is your educational background to be doing
7 this type of finance work like?

8 A. Most recently, I have an MBA from the
9 University of Pennsylvania, the Wharton School in
10 real estate. Prior to that, I have a masters in
11 urban planning from UCLA. And I have an
12 undergraduate degree from Steven F. Austin in
13 environmental science.

14 Q. And what other employment have you had over the
15 course of your career?

16 A. I was an officer in the Marine Corps from 1995
17 to 2006. I worked for a vineyard management and
18 acquisition company, in a similar role, like buying
19 and underwriting land deals, and I worked for a
20 couple of developers.

21 Q. And so, you said one of the things that you --
22 your primary duties at Buffington was, did I hear
23 you say like pro formas or cash rolls or something
24 like that? Explain that further.

25 A. Yes.

1 So if we're looking at potentially acquiring a
2 new acquisition, I would project how much it would
3 cost to develop, how much revenue we would get when
4 we developed and sold the lots.

5 That was one function I had.

6 Another function I had was creating
7 portfolio-level cash flows of subdivisions, so
8 Buffington owned approximately 15 subdivisions and
9 we were buying more occasionally, and so I would
10 roll up -- roll those projects up into a monthly
11 cash flow.

12 Q. So sort of all of the projects into one Excel
13 spreadsheet?

14 A. That's correct, basically.

15 Q. Did there ever come a point in time you were
16 asked to provide a cash roll spreadsheet or some
17 type of portfolio cash flow projection for
18 Buffington but to the entity UDF?

19 A. Yes.

20 Q. Tell us how that came about.

21 A. I believe in the spring of '13, my boss, James
22 Dorney, emailed myself and another analyst, who did
23 a similar thing that I did, and said, that UDF
24 needed this for, I believe it was for an audit, and
25 asked us to -- or asked me to start working on it.

1 And we had kind of the basic bare bones of this
2 model, so I continued to work on it and refine it
3 over time.

4 Q. Now, prior to that, and you said that was --
5 could it have been the spring of '14? Was that --
6 we'll get to the emails in just a little bit.

7 A. Yes.

8 Q. But it was the spring time, is that right?

9 A. Yes.

10 Q. Prior to that, had you had involvement with the
11 lending relationship between UDF and Buffington?

12 A. I was aware of it. I was on many email chains.

13 Q. And by becoming aware of it, did anything, I
14 mean, you knew what Buffington's finances were, you
15 were sort of the finance guy that you've been
16 describing, is that right?

17 A. Yes.

18 Q. Were you aware of Buffington's situation and
19 did you start to look into anything as it concerns
20 UDF?

21 A. Yes.

22 Q. Tell us about that and when you did that.

23 A. There were really two main levels of concern.
24 One was the amount of debt that we were carrying
25 specifically related to the earlier vintage funds of

1 UDF and UDF III, given how much of collateral was
2 left in our various subdivisions.

3 And the other area of concern was that we were
4 refinancing loans that were with UDF I and III, we
5 were refinancing with UDF IV money, and I wasn't
6 sure of the function of that or how it would be paid
7 off in the end.

8 Q. As a result of seeing that that's what
9 Buffington was doing, refinancing I and III, the
10 vintage funds with money from UDF IV, did you take
11 any steps or look into anything?

12 A. Yes.

13 Q. What did you look into?

14 A. I took it upon myself to start looking into
15 UDF's SEC filings, 10-Ks and 10-Qs, trying to
16 understand more how they were looking at our loan
17 balances, and so I looked into it on my own.

18 Q. And after you looked at those various filings
19 with the SEC, did you notify the Securities and
20 Exchange Commission as to what you had observed?

21 A. Yes.

22 Q. Sometimes people call that being a
23 whistleblower.

24 Are you a whistleblower, sir?

25 A. Yes.

1 Q. Now, do you recall when you made that
2 whistleblower complaint as it concerns UDF?

3 A. December of 2013.

4 MR. PELLETIER: I'm sorry. I didn't hear
5 that.

6 MS. EGGERS: December of 2013.

7 Now, your Honor, at this time I would ask
8 to introduce Government's Exhibit 117.

9 THE COURT: 117 will be admitted.

10 (The referred-to document was admitted in
11 Evidence as Government's Exhibit 117.)

12 BY MS. EGGERS:

13 Q. Mr. Parker, I'm going to enlarge this.

14 This is an email dated March 18, 2014, from
15 you, is that correct?

16 A. That's correct.

17 Q. And it says: "Attached is a summary and 5028
18 cash flow."

19 What is a 5028 cash flow?

20 A. That was, I believe it was a loan number,
21 collateralized by the projects you see below it.

22 Q. And it appears as though there was a
23 spreadsheet attached, is that correct?

24 A. That's correct.

25 Q. And is this one of those sort of a portfolio

1 where you would bring everything together in one
2 spreadsheet?

3 A. That's correct.

4 Q. And it has a date of February 28, 2014, is that
5 correct?

6 A. Yes.

7 Q. And then down, listed there, there is projects
8 listed, is that correct?

9 A. Correct.

10 Q. And looking at those projects, the first one is
11 Bratton, is that correct?

12 A. Yes.

13 Q. And the last one is Westpointe?

14 A. Yes.

15 Q. It appears, since I highlighted them,
16 highlighting them like that, that appears to be
17 approximately -- or appears to be how many projects?

18 A. Twenty-three.

19 Q. And is this -- would this have been then the
20 spreadsheet that you would have sent to the folks
21 over at UDF, specifically Brandon Jester and Jeff
22 Gilpatrick on March 18, 2014?

23 A. Yes.

24 Q. So let's remember Westpointe being the last
25 one, okay?

1 Now, this is after you have filed -- you have
2 lodged the information with the SEC, is that
3 correct?

4 A. That's correct.

5 Q. Did you tell anybody at UDF that you had gone
6 to the SEC about what they -- what you observed?

7 A. No.

8 Q. No?

9 A. No.

10 MS. EGGERS: Your Honor, at this time I
11 would ask to introduce Government's Exhibits 102 and
12 103.

13 THE COURT: They will be admitted.

14 (The referred-to documents were admitted
15 in Evidence as Government's Exhibits 102 and
16 103.)

17 BY MS. EGGERS:

18 Q. Now, that email that you were on, that went
19 from you to Buffington, the one we just saw, is that
20 correct? 117?

21 A. I would have to look at the address list again.
22 But, yes, to Brandon, Jeff, cc, James and Blake.

23 Q. And you're going to have keep your voice up.
24 When you look at the screen, your head turns away.
25 Let's then go to Government's Exhibit 102.

1 And this is an email dated March 25th, 2014, is
2 that correct? Approximately a week later?

3 MR. ANSLEY: Your Honor, objection. It
4 appears the witness is not on this email chain.

5 THE WITNESS: He's not what?

6 MR. ANSLEY: He's not on this email chain.

7 THE COURT: So the question was, this was
8 sent a week later?

9 MS. EGGERS: Yes.

10 THE COURT: He's not on this -- so how
11 does he have personal knowledge?

12 MS. EGGERS: He would not, your Honor,
13 other than the spreadsheet. And that's why I asked
14 to introduce it, and there was no objection. So I'm
15 sorry, I didn't think there was going to be an
16 objection. We have a custodian-of-record affidavit
17 for it.

18 THE COURT: Do you object to the custodian
19 of record evidence?

20 MR. STEPHENS: Your Honor, we would also
21 make a 403 and 401 objection.

22 MR. ANSLEY: Your Honor, this
23 certification authenticates the exhibit but does not
24 establish --

25 MS. EGGERS: Your Honor, if we may

1 approach.

2 THE COURT: Bring that.

3 (The following proceedings were had at
4 sidebar without being reported:)

5 BY MS. EGGERS:

6 Q. Mr. Parker, I'm going to go back to, I believe
7 we were at Government's Exhibit 103.

8 And you were not on this email, do you agree?

9 A. I agree.

10 Q. And at the very end of it, you were not on it
11 at the very end of it either, do you agree?

12 A. Agreed.

13 Q. And this is one week after you sent
14 Government's Exhibit 117, is that correct?

15 A. That's correct.

16 Q. And it looks as though there were Excel
17 spreadsheets, attached?

18 A. It looks as if that's the case.

19 Q. And looking at this, sir, are you able to see
20 it in front of you?

21 A. Yes.

22 Q. Does it say Buffington Land Group Portfolio
23 Summary, February 28, 2014?

24 A. That's correct.

25 Q. And the first project listed there is what?

1 A. Bratton.

2 Q. And we get to project number 23, which we just
3 highlighted them, and does it have Westpointe there?

4 A. That's correct.

5 Q. So let's go below.

6 Were there 11 other names below the Westpointe,
7 which was the last one on yours?

8 A. That's correct.

9 Q. Westpointe.

10 Q. Do you know who put those on there?

11 A. No.

12 MS. EGGERS: May I have on moment, your
13 Honor?

14 THE COURT: Just for the record, at the
15 bench, all defendants objected to 103 on hearsay
16 grounds, 401 and 403 grounds, and after reviewing
17 the affidavit, I overruled those objections.

18 Is that sufficient?

19 MR. ANSLEY: Yes, your Honor.

20 THE COURT: For the record, our discussion
21 at the bench?

22 MR. STEPHENS: Yes, sir, your Honor.

23 MR. PELLETIER: Yes, your Honor.

24 THE COURT: Okay.

25 MS. EGGERS: Your Honor, at this time I

1 would ask to introduce Government's Exhibit 128.

2 THE COURT: That will be admitted.

3 (The referred-to document was admitted in
4 Evidence as Government's Exhibit 128.)

5 BY MS. EGGERS:

6 Q. Mr. Parker, I'm going to show you Government's
7 Exhibit 128.

8 Now, this is an email from you on April 2nd,
9 2014, is that correct?

10 A. That's correct.

11 Q. And it looks as though there is a spreadsheet
12 attached?

13 A. Correct.

14 Q. And it's from you to Jeff Gilpatrick, is that
15 correct?

16 A. Correct.

17 Q. What is this? This spreadsheet?

18 A. It's a loan schedule.

19 Q. Explain to us what that means.

20 A. These are various loans. So one of your
21 previous questions on an email was what did 5028
22 mean.

23 So if you look in row 6, you see loan number
24 5028 referenced. And then in the fund is column E.

25 Q. And so the fund, the lender for those would be

1 the draws coming from UDF IV, those first that we
2 see, is that correct?

3 A. That's correct.

4 Q. It is a six-month projected loan draw repayment
5 schedule.

6 So where are the draws and where is the
7 repayment?

8 A. I would have to scroll down to see for sure,
9 but I believe what we're looking at are the draws
10 and then the -- yeah. If you look at where you're
11 at now below -- below row 40 is repayments.

12 Q. Okay. And this was another spreadsheet that
13 you would have sent, is that correct?

14 A. It appears to be, yes.

15 MS. EGGERS: If I may have one more
16 moment, your Honor.

17 Nothing further at this time, your Honor.

18 CROSS-EXAMINATION

19 BY MR. PELLETIER:

20 Q. Good afternoon, Mr. Parker. My name is Paul
21 Pelletier.

22 A. Good afternoon.

23 Q. I represent Hollis Greenlaw.

24 First of all, thank you for your service.

25 A. Thank you.

1 Q. So before you worked for Buffington, had you
2 done any real estate development residential
3 financing in Texas business before? Had you ever
4 been in the residential real estate financing in
5 Texas before you started working for Buffington?

6 A. Not in that specific role.

7 Q. I'm sorry?

8 A. Not in that specific role that you described.

9 Q. Okay.

10 And so what did Buffington Land do?

11 A. We would basically buy raw land, so think about
12 a field, put in streets, entitlements, utilities,
13 and then sell lots to both the Buffington Home
14 Building Group, so an affiliated group and third
15 parties.

16 Q. And you would obtain financing for that entire
17 process, correct? When I say you, Buffington Land?

18 A. Yes. There was financing involved.

19 Q. And you talked about entitlements.

20 Could you tell the Jury what entitlements are?

21 A. An entitlement is basically the -- a
22 government-granted right to do something on a
23 project, such as build a home or subdivide it.

24 Q. And when you started doing this for Buffington,
25 did you come to learn that entitlements were very

1 valuable?

2 A. There's value.

3 Q. I'm sorry?

4 A. There is value.

5 Q. And in Texas, I'm going to call it, you know
6 what a MUD is or a PID?

7 A. I'm familiar, yes.

8 Q. So a MUD is a municipal utility district?

9 A. Correct.

10 Q. And a PID is a public --

11 A. Public improvement district.

12 Q. -- Improvement district, right?

13 A. Correct.

14 Q. They can add value of up to 15,000 or more
15 dollars per lot, isn't that correct?

16 A. I'm assuming. I don't recall the exact number.
17 I wouldn't want to attest to that.

18 Q. Well, isn't that something you would have to
19 include in your pro formas because aren't you
20 projecting the amount of money that will be repaid
21 on those projects?

22 A. That's part of it.

23 Q. So it's very important, is it not, to
24 understand how much you are going to be reimbursed
25 for the PIDs and the MUDs and the entitlements that

1 Buffington Land put in and increased so much in
2 value of the property, that's important, right?

3 A. I would agree with that.

4 Q. And as it relates to Buffington, you said that
5 when you first got there, you determined that -- you
6 tried to find out what was going on with the loans
7 and how much -- how much they owed to UDF, is that
8 correct?

9 A. It was not when I first got there, but it was
10 throughout my tenure there.

11 Q. Well, I think -- did you not say that at some
12 point in time, maybe even your whistleblower
13 complaint to the SEC, that in about August of 2012,
14 you were assigned a project to determine that?

15 A. Can you repeat the question?

16 Q. Yes.

17 Did you not affirmatively say to the SEC that
18 in or about August, August through October of 2012,
19 after you started there, you were assigned the
20 project of determining the repayment of UDF loans?

21 A. Yes. That's part of what I did.

22 Q. And did you not do an analysis, I'm going to
23 say on October 1st, 2012, and did that analysis show
24 that you believed that the UDF loan was under water
25 by 67 million.

1 Do you remember that?

2 A. I don't remember that specifically, but that
3 sounds reasonable.

4 Q. I'm going to show you Government's Exhibit --
5 excuse me -- Defendant's Exhibit 8247.

6 MS. EGGERS: Your Honor, that's the same
7 objection as earlier. The number itself is not --

8 THE COURT: Go ahead and show it to him
9 and see if it at least refreshes his memory.

10 BY MR. PELLETIER:

11 Q. I ask you if this helps.

12 MR. PELLETIER: May I approach, your
13 Honor?

14 THE COURT: Yes.

15 BY MR. PELLETIER:

16 Q. If this helps refresh your recollection.

17 I apologize for the size of the print.

18 THE COURT: The question is, does that
19 refresh your memory as to this subject?

20 THE WITNESS: It refreshes my memory
21 somewhat. I do recall this being involved with
22 this, but I don't recall the exact specifics.

23 BY MR. PELLETIER:

24 Q. All right. I get that.

25 But you did a project and you reported back by

1 email -- correct me if I'm wrong -- that the UDF
2 loan was under water by 67 million in October of
3 2012.

4 That's correct, right?

5 A. I don't have a specific recollection of
6 reporting that number at that date, but if you say
7 so and you have an email, then I'm not disagreeing
8 with you.

9 THE COURT: No. You should only testify
10 what you can recall now. Testify to the best of
11 your ability.

12 THE WITNESS: Yes, I recall that. It
13 sounds reasonable.

14 BY MR. PELLETTIER:

15 Q. I'm sorry?

16 A. That sounds reasonable.

17 Q. Okay.

18 And that was in October, correct?

19 A. Correct.

20 Q. All right.

21 And then did you do another analysis -- and by
22 the way, what you're doing -- correct me if I'm
23 wrong -- is you're doing a -- an evaluation of
24 project-level loans.

25 You're evaluating the projects that are

1 currently on the ground, correct? And the
2 repayments?

3 A. That was part of the analysis.

4 Q. Had you ever done these residential real estate
5 project level loans before October of 2001. And
6 when I say that, had you ever done a pro forma on
7 residential real estate project loans before that?

8 A. Not -- not exactly like this.

9 Q. Okay. And so you agree that the first -- the
10 first scrub you took at October was that there was
11 67 million under water. And I'm going to ask you if
12 you recall in doing the same exercise in February
13 if -- if you recall doing the same exercise in
14 February of 2013, I'm going to say six months later?

15 A. No. I mean -- I worked on many projects. I
16 don't recall the specific one, but if you have
17 something to refresh my memory.

18 THE COURT: You said no, you don't recall.

19 Next question.

20 BY MR. PELLETIER:

21 Q. If I showed you a document that might refresh
22 your recollection.

23 MR. PELLETIER: Might I do that, your
24 Honor?

25

1 I'm going to show you Government's Exhibit
2 8240 for impeachment. I'm sorry. Defendants' 8240
3 for impeachment, your Honor.

4 May I approach, your Honor?

5 BY MR. PELLETIER:

6 Q. Does this refresh your recollection that in
7 January you did the same exercise again and you came
8 up with a \$323 million in arrearage number for that
9 UDF III loan?

10 A. I vaguely recall this.

11 Q. All right.

12 THE COURT: Hold on.

13 So that does refresh your recollection as
14 to that subject on that day and those amounts?

15 THE WITNESS: As to the general subject.

16 THE COURT: Okay. So let him ask you
17 another question.

18 BY MR. PELLETIER:

19 Q. So did you do a project analysis in January
20 that arrived at a deficiency of a UDF loan six
21 months later at 360 million, around that number?

22 A. You're asking specifically about the
23 spreadsheet?

24 Q. I'm asking if you recall doing it and arriving
25 at that conclusion.

1 A. Vaguely.

2 Q. Okay.

3 Well, did you do it?

4 THE COURT: What do you mean by that? Is
5 that a yes? Or --

6 THE WITNESS: Well, I remember working on
7 the specific project. But if you're asking me am I
8 100 percent sure that I produced this spreadsheet
9 that I have in my hand --

10 THE COURT: No. Stop. That's not the
11 question about whether you produced that spreadsheet
12 or not.

13 The question just is, does that
14 spreadsheet refresh your recollection as to this
15 assignment at work on this occasion in these
16 amounts?

17 Does that spreadsheet trigger in your mind
18 a memory that you did this project on this date and
19 found these amounts?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 MR. PELLETIER: If we could pull up
23 Government's Exhibit 117, please.

24 BY MR. PELLETIER:

25 Q. Now, this was shown to you earlier. This is an

1 analysis that you did in it March 18th of 2014.

2 Do you see that?

3 A. Yes.

4 Q. And do you remember the prosecutor asking you
5 the question whether or not you had prepared this
6 pursuant to a -- she showed you a prior email that
7 said because -- because -- excuse me -- Jeff
8 Gilpatrick had asked, had asked you on March 6th --
9 I think the email will bear out the right date --
10 whether or not you could help him because he needed
11 to something for the auditors.

12 Do you remember that email?

13 A. Yes.

14 Q. I'm sorry if I got the date wrong. It might
15 have been March 12th.

16 Isn't it true that you had already been
17 preparing this spreadsheet because you were doing an
18 evaluation of whether or not to renew the UDF III
19 loan, that you had already been working on?

20 As a matter of fact -- well, let me ask you
21 this first, I don't want to compound it.

22 Isn't that true?

23 A. Again, I worked on many spreadsheets, I don't
24 remember the specific instance you're asking about.

25 Q. Well, if you look at the attachment, it says,

1 BLG Portfolio NCF Summary, 2/28/14.

2 You had been working on that summary since
3 February 28th of '14, isn't that correct?

4 A. I had been working on this specific project
5 that you're referencing. Probably from before that.

6 Q. So you will admit that Jeff Gilpatrick was
7 saying, I need it for the loan renewal, right? And
8 he kept pestering you for it, isn't that correct?

9 A. I do not recall.

10 Q. Can we go to the spreadsheet that's attached?

11 Did you spreadsheet this out to say that this
12 loan to UDF III in 2 of '14 was going to owe more
13 than \$4 billion?

14 A. And when you say owe more than \$4 billion,
15 you're referencing some point in the future?

16 Q. Yes.

17 A. Yes.

18 Q. So you said that this loan was going to be
19 under water -- originally, a year earlier, a year
20 and a half earlier you said it was going to be under
21 water 67 million, and then 360 million six months
22 later, and then on 2/14 more than \$4 billion,
23 correct?

24 A. I don't think you're presenting it accurately.

25 Q. Okay.

1 Help me out.

2 A. Well, the first one you referenced, I'm not
3 sure if that's equivalent to what we are talking --
4 what you're talking about in 2 and 3. I would have
5 to have a pretty detailed look at the spreadsheet
6 support.

7 And then with -- between 2 and 3, the
8 \$4 billion, I believe you're referencing a date many
9 years in the future where after decades or years, if
10 not decades of interest accrual from my memory. But
11 you would have to look at the later dates in the
12 spreadsheet.

13 Q. So I think what you're saying, and correct me
14 if I'm wrong, that that's not a realistic date or
15 amount because that's presuming that there are no
16 payments made on the loan, right?

17 A. That's not correct. You're -- there are
18 payments in the top half of the spreadsheet.

19 Q. All right.

20 So if no other business is done by UDF -- by
21 Buffington?

22 A. I can't speculate on what other business you're
23 proposing.

24 Q. I'm not proposing any business.

25 What was Buffington in the business of doing?

1 I thought you said it was developing land and
2 acquiring assets, land to build developments. Isn't
3 that what they were in the business of?

4 A. That's correct.

5 Q. And so as a matter of fact, in 2013, they added
6 seven projects to the portfolio, correct?

7 A. I don't recall how many were added in '13.

8 Q. All right.

9 Well, if -- if the evidence in this case shows
10 or will show that they added seven projects --

11 MS. EGGERS: Objection, your Honor.
12 Counsel is testifying. The witness just said he
13 didn't recall.

14 MR. PELLETIER: I will withdraw the
15 question.

16 THE COURT: Okay.

17 BY MR. PELLETIER:

18 Q. Does seven sound right?

19 A. Seven sounds approximately right.

20 Q. All right.

21 So the business of Buffington was to acquire
22 projects to build them and use those projects, the
23 funding of those projects and the revenue from those
24 projects to repay UDF's loans, isn't that the way is
25 worked?

1 A. That's correct.

2 Q. And you know that as it relates to determining
3 what -- whether a company can repay its bills,
4 future acquisitions are very important, because your
5 business isn't going to end at the end of this
6 fiscal year, right? The business is going to
7 continue, isn't that correct?

8 A. You're asking me if their business is going to
9 continue?

10 Q. Yes.

11 A. Presumably.

12 Q. And so when you're trying to determine whether
13 a project level loan can be paid, that's one thing.
14 When you're trying to determine whether an
15 enterprise loan, like UDF III was, which relies upon
16 the continuation of your business, that's a
17 different model, isn't it?

18 A. There are differences in modeling that, that's
19 correct.

20 Q. And so as it relates to these projections, and
21 as it relates to exactly what is going on, in 2012,
22 December, you filed a whistleblower complaint?

23 A. No, '13.

24 Q. I stand corrected. 2013.

25 In December, you filed a whistleblower

1 complaint with the SEC, correct?

2 A. Correct.

3 Q. And in that whistleblower complaint, you
4 said -- by the way, did you ever tell anyone at UDF
5 that -- that you believed that UDF -- that
6 Buffington couldn't pay UDF's UDF III loan, and if
7 so, who did you tell?

8 A. I did not tell anybody.

9 Q. And so in December of 2013, you filed the
10 whistleblower complaint. And then in July of 2020,
11 you called up Special Agent Edson, didn't you?

12 A. I don't recall. Possibly.

13 Q. And you asked whether or not you were going to
14 get your money from the whistleblower complaint,
15 isn't that correct?

16 A. Possibly.

17 Q. And then I want to say about six months later,
18 that was in July of 2020?

19 MS. EGGERS: Your Honor, can we approach?

20 THE COURT: You may.

21 (The following proceedings were had at
22 sidebar without being reported:)

23 MR. PELLETIER: May I have one moment,
24 your Honor?

25 I have no further questions, your Honor.

1 MR. STEPHENS: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. STEPHENS

4 Q. Mr. Parker, my name is Neal Stephens. I
5 represent Ms. Obert.

6 How are you?

7 A. Well.

8 Q. In December of 2013, when you raised this
9 whistleblower issue with the SEC, who were you
10 working for at Buffington?

11 A. My direct boss was James Dorney.

12 Q. Did you work with Patrick Starley?

13 A. Not at that point in time. But I did when I
14 first started at Buffington.

15 Q. So you knew Mr. Starley?

16 A. Yes.

17 Q. Have you ever told Mr. Starley that you filed
18 with the SEC?

19 A. No.

20 Q. In December of 2013, is it your testimony that
21 you had any conversations at all with Mr. Starley
22 about the SEC?

23 A. Correct.

24 Q. You had no conversations is what your testimony
25 is?

1 A. Correct.

2 MR. STEPHENS: Thank you.

3 MR. LEWIS: No, sir, thank you.

4 MR. ANSLEY: No questions, your Honor.

5 MS. EGGERS: Yes, your Honor, just very
6 briefly.

7 REDIRECT EXAMINATION

8 BY MS. EGGERS:

9 Q. The email that you sent, Mr. Parker, it was
10 dated March 18 of 2014, is that correct?

11 A. That's correct.

12 Q. And then going to -- that's Government's
13 Exhibit 117. Let's go to Government's Exhibit 127.

14 This is the one with you earlier, but who --
15 what is the date of this email right here, 127 and
16 the part that I have enlarged?

17 A. March 12, 2014.

18 Q. And who is listed as having written the email?

19 A. Brandon Jester.

20 Q. And does he say: "Following up on the status
21 of the updated cash flow for Buffington Land 1 and
22 3"?

23 A. Correct.

24 Q. I need to make sure I receive this on Friday as
25 previously requested?

1 A. Correct.

2 Q. Our auditors have now requested this same
3 information and I'm obligated to provide this on
4 Monday morning.

5 Is that correct?

6 A. Yes.

7 Q. Please ensure that we receive this information
8 on time. Is that correct?

9 A. That's correct.

10 Q. Do you have a crystal ball or something,
11 anything like that?

12 A. No.

13 Q. Did you know at the time that somebody had
14 manipulated your spreadsheet and added things to
15 your --

16 MR. PELLETIER: Objection, your Honor.

17 THE COURT: What is the objection?

18 MR. ANSLEY: Leading.

19 MR. PELLETIER: Leading; facts not in
20 evidence.

21 THE COURT: Okay. I'm going to strike the
22 crystal ball question, but overrule the objections
23 to did you know anyone had edited your spreadsheet.

24 THE WITNESS: I did not know.
25

1 BY MS. EGGERS:

2 Q. And the complaint that you filed, that was with
3 the SEC, is that correct?

4 A. That's correct.

5 Q. And this female to my right, immediate right,
6 that is Special Agent Christine Edson with the FBI,
7 is that correct?

8 A. That's correct.

9 MS. EGGERS: No further questions, your
10 Honor.

11 MR. ANSLEY: Your Honor, follow up?

12 THE COURT: Yes.

13 MR. ANSLEY: Will you pull that same
14 exhibit up again, please?

15 Try 127.

16 CROSS-EXAMINATION

17 BY MR. ANSLEY:

18 Q. Okay.

19 Do you see that again, Mr. Parker?

20 A. Yes.

21 Q. After this email exchange, Jeff Gilpatrick sent
22 you an email in which he included an updated pro
23 forma spreadsheet based on what you had sent him?

24 A. I would have to see the email and spreadsheet
25 to confirm or deny that. I mean, I don't remember

1 the specific email you're referencing.

2 Q. You don't dispute -- well, you don't remember
3 one way or the other whether that happened, is that
4 correct?

5 A. What's your question?

6 Q. You don't recall one way or the other receiving
7 an email after that, this date, with an updated
8 spreadsheet from Jeff Gilpatrick?

9 A. No.

10 Q. Okay.

11 MR. ANSLEY: Thanks, sir.

12 THE COURT: Okay. Anything else?

13 MS. EGGERS: No, your Honor. This witness
14 may be released.

15 THE COURT: Any objections to that?

16 MR. PELLETIER: Yes, absolutely.

17 MR. STEPHENS: No objection.

18 MR. LEWIS: No objection.

19 THE COURT: Okay. So you are free to go.
20 And we will take our afternoon break. So why don't
21 we take about a 10-minute break and stretch your
22 legs, et cetera. Then we will get you right back
23 in.

24 THE COURT SECURITY OFFICER: All rise.

25 (The jurors exited the courtroom.)

1 (Thereupon, a recess was taken, after
2 which the following proceedings were held:)
3 THE COURT: Please be seated.
4 MS. EGGERS: Casey Ford, your Honor.
5 (CASEY FORD was duly sworn by the Court.)
6 THE COURT: Yes, okay.
7 THE COURT SECURITY OFFICER: All rise.
8 (The jurors entered the courtroom.)
9 THE COURT: Okay. Please be seated. And
10 this witness has previously been sworn in.
11 MS. JONES: Thank you, your Honor.
12 DIRECT EXAMINATION
13 BY MS. JONES:
14 Q. Please state your name for the record.
15 A. Casey Ford.
16 Q. I'm going to need you -- can you pull the
17 microphone a little closer to you, please?
18 Thank you.
19 Mr. Ford, what do you do?
20 A. I'm a CPA.
21 Q. And how long have you been a CPA?
22 A. Since 2007.
23 Q. Where do you currently work?
24 A. At HCVT at the public accounting firm.
25 Q. Now, where did you work prior to there?

1 A. Centurion American. Prior to that I was at
2 Ernst & Young.

3 Q. And are you, I think you said, you're a
4 licensed CPA?

5 A. Yes.

6 Q. So have you done accounting work your whole
7 career?

8 A. Yes.

9 Q. Where did you obtain your bachelor's degree?

10 A. Baylor University.

11 Q. And how long have you been a CPA?

12 A. Since 2007. In the state of Texas.

13 Q. Now, how long did you work at Centurion?

14 A. From 2012 to around July 20th of 2015.

15 Q. Are you familiar with United Development
16 Funding otherwise known as UDF?

17 A. Yes.

18 Q. Did you have a relationship with them when you
19 worked at Centurion?

20 A. Yes.

21 Q. What was Centurion's relationship with UDF?

22 A. Centurion's relationship was, we developed land
23 and would obtain loans from UDF to help fund the
24 development of the land for residential lots.

25 Q. What was your position at Centurion?

1 A. I started off as the tax manager and then was
2 promoted to the CFO role towards the end of 2012.

3 And that's when I left, I was the CFO.

4 Q. What year did you leave again?

5 A. 2015.

6 Q. And during that time that you were at
7 Centurion, did you -- did you become familiar with
8 the UDF loans that Centurion had?

9 A. Yes.

10 Q. Now, did they have loans with different UDF
11 funds or just one?

12 A. Multiple funds, UDF III and UDF IV, and I
13 believe UDF V was coming on line, but I don't quite
14 remember if that was on line at the time.

15 Q. When you were there, towards the end of '14 and
16 '15, approximately how much, if you recall, were the
17 total amount of the loans at Centurion had with UDF?

18 A. Around 600 to 700 million.

19 Q. And Centurion is located where?

20 A. Carrollton/Farmers Branch.

21 Q. And do they do developments in other places
22 besides the Dallas area?

23 A. Yes, all across the state of Texas.

24 Q. You said the total was about 6- to 700 million
25 when you were there?

1 A. Correct.

2 Q. As CFO, did you have the opportunity to review
3 some things on those loans and have an idea of how
4 those loans worked?

5 A. Yes.

6 Q. Are you familiar with if those loans allowed
7 for overhead to be funded at Centurion?

8 A. Yes.

9 Q. And tell me -- the jury how that works.

10 A. So the way it would work was we would have
11 monthly meetings with my boss and his boss and a
12 couple of other individuals, and we would have
13 monthly meetings to see what we needed to draw down
14 on the loan to pay for the infrastructure, putting
15 roads in, utilities, paying property taxes, other
16 expenses. Payroll was another thing. We had a
17 management fee agreement where we could pull -- it
18 was roughly \$85,000 biweekly, so we could fund
19 payroll as well.

20 Q. Now, when you would fund payroll, did that come
21 out of a specific project loan or was it a general
22 loan?

23 A. Originally, it would have been UDF's general
24 loan, because UDF III was more of a general loan
25 where it funded several developments, several

1 builds.

2 And then down the road, my recollection is
3 UDF IV had deal-specific loans, so then we would
4 have funded off deal-specific loans. I couldn't
5 tell you exactly which loan it did, though.

6 Q. When you say "deal-specific loans," can you
7 tell the Jury what that means?

8 A. Correct.

9 So -- so the UDF III, the loan, it was a
10 general loan, it would fund multiple deals so you
11 had deals 1 through 20, you could pull off that loan
12 and then fund those specific deals to fund the
13 infrastructure, payroll, everything I just talked
14 about.

15 "Deal specific" means that loan should be only
16 utilized for that specific deal. So say we added
17 Deal 11 down the road, then Loan No. 2 could only go
18 to Deal No. 11.

19 Then we added another deal, say Deal 12, then
20 Loan No. 3 could only go to Deal 12.

21 Q. Did you have multiple projects going at one
22 time that UDF was a lender for?

23 A. Yes.

24 Q. Now, are you familiar with the term "a draw
25 request" on those loans?

1 A. Yes.

2 Q. Can you tell the Jury how that would work?

3 A. So the draw request was, we would do the
4 monthly meetings, see what bills we needed to pay,
5 what we needed to fund. Then our accountants would
6 send the draw requests to UDF. They would review
7 it, pull down the funds, and then remit the money to
8 Centurion to pay their bills.

9 Q. Now, so when, say, somebody that poured
10 concrete at one of these projects, how would they
11 get paid?

12 A. They would invoice the Centurion entity that
13 they did the work for. We would have a monthly
14 meeting, draw down the loan, and then pay -- with
15 the monies we received off the loan from UDF, we
16 would then take that money, and turn around and pay
17 that invoice to the concrete vendor.

18 Q. So would Centurion send the invoice to UDF and
19 ask for the money to be withdrawn?

20 A. Yes. They would review it, make sure it was a
21 legitimate expense.

22 Q. Was there ever a time when there were draw
23 requests and that wasn't the process?

24 A. Yeah, there were times when UDF would actually
25 approach us for a draw.

1 Q. Did you notice anything about the timing of
2 those requests?

3 A. Yes. Usually it was around when distributions
4 had to go out to the investors.

5 Q. Now, when you say they would approach you, what
6 do you mean by that?

7 A. TPG would approach Centurion and want to
8 discuss how to make certain draws to fund -- to fund
9 whatever they needed to fund. And usually that
10 would happen right around when the investors had to
11 get paid.

12 Q. And when they would approach you, and you're
13 saying on a draw, give a scenario of what you mean
14 by that, like what they would do.

15 A. I know towards -- towards the end -- so we
16 would also have meetings every once in a while --
17 once a week with UDF. And I recall a few times
18 after the meetings, in the hallways, I think it was
19 either -- I want to say it was Ben Wissink would ask
20 Mehrdad Moayedi, who he was the owner of Centurion,
21 hey, we have distributions that we need to get out.
22 Can we discuss, you know, doing a certain loan?

23 I don't know all the details, because then they
24 would go into a back office meeting, and then hash
25 it out there. And then usually a draw would occur.

1 Q. Now, you said Mehrdad Moayedi. What is his
2 position?

3 A. He was the chief executive officer and the
4 owner of Centurion.

5 Q. Are you aware if he had personal guaranties
6 associated with the loans?

7 A. Yes, he had \$10 million of personal guaranty
8 for the loans at UDF.

9 Q. Now, did there ever come a time that you were
10 concerned about Centurion's ability to pay back that
11 6- to 700 million?

12 A. Yes.

13 Q. And why was that?

14 A. Because the loans were so substantial, I didn't
15 see how it was viable for the business to pay them
16 back.

17 And, additionally, I would have conversations
18 with Tyson Walter and Jeff Shirley, where they had
19 mentioned in passing that there was no way that we
20 could pay the loans back, so that was very
21 concerning with me.

22 Q. And were you familiar with cash flow
23 projections that say Mr. Walter would do for the
24 loans and the projects at Centurion?

25 A. Yes, my understanding, he was one of the

1 analysts and helped with the loan process for UDF,
2 and he specifically said that there's no way we can
3 pay this back. The only way you could ever pay
4 these loans back is if you stopped accruing
5 interest.

6 Well, the notes say you have to accrue interest
7 and the rate was pretty substantial.

8 Q. How much was the interest, if you recall?

9 A. They were generally between 16 and 20 percent.

10 Q. Now, you said earlier --

11 MS. JONES: Your Honor, I will move to
12 admit 260 into evidence. Government's Exhibit 260
13 into evidence?

14 THE COURT: 260 will be admitted.

15 (The referred-to document was admitted in
16 Evidence as Plaintiff's Exhibit 260.)

17 BY MS. JONES:

18 Q. Now, you can see 260 is up on the screen.

19 What is 260?

20 A. This is an email of me sending Tyson Walter a
21 request for payroll funding on Monday, January 6,
22 2014.

23 Q. When you -- you said Tyson Walter. Was he one
24 of the asset managers for UDF?

25 A. Yes.

1 Q. And is this -- when you say "payroll," is that
2 the overhead expense that we were talking about
3 earlier?

4 A. Correct.

5 Q. And so this week is payroll and it will need to
6 be funded.

7 What are you asking?

8 A. Basically I'm asking to please draw off your
9 line of credit that we have. I don't know what
10 specific line you're going to draw it off of, and
11 please fund us the money so we can pay or employees.

12 Q. Did you say pay the employees?

13 A. Pay our employees, correct.

14 Q. You trailed off a little bit --

15 A. I'll do better.

16 Q. I was just making sure.

17 May I have just a moment, your Honor?

18 THE COURT: Yes.

19 MS. JONES: Pass the witness.

20 MR. ANSLEY: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ANSLEY:

23 Q. Good afternoon, sir.

24 A. Good afternoon.

25 Q. You said you were the CFO for Centurion

1 American for, it looks like, about three years?

2 A. Yes.

3 Q. And during that time period, did you -- did you
4 work with first, Linda Visser?

5 A. Yes.

6 Q. What was her position at Centurion?

7 A. She's was a controller.

8 Q. Is she still there, if you know?

9 A. I don't know.

10 Q. What about Renee Mueller?

11 A. She was an accountant.

12 Q. Okay.

13 In the same division, the same section as
14 Ms. Visser?

15 A. Yes.

16 Q. You talked about at least Centurion's lending
17 relationships a little bit, and which included UDF.

18 Would -- who were the people within Centurion
19 who were responsible for handling Centurion's
20 lending relationships with outside lenders?

21 A. Jeff Shirley. He was the main point of contact
22 for UDF and with Centurion, to put all of the loans
23 in place that UDF -- he previously even worked at
24 UDF.

25 We also had a few other -- I want to say his

1 name was Dustin. I don't recall his last name.

2 Q. Does the name Dustin Warren ring a bell?

3 A. Yeah, Dustin Warren.

4 Q. Dustin Warren?

5 A. Yes, sir.

6 Yes, he helped put in loans in place. I helped
7 on the 2M side, which is a different portion of the
8 company. So I helped put maybe five loans in place,
9 as I recall.

10 Q. Got it. What about -- I'm sorry.

11 Go ahead.

12 A. And then it was either Elaine or Eleanor. We
13 hired her --

14 Q. Does the name Elaine Edinger ring a bell?

15 A. That's correct. That's the name.

16 Q. So from the standpoint of -- to summarize, from
17 the standpoint of Centurion's relationships with
18 outside lenders, handling those relationships,
19 interacting, you're not -- you're not part of the
20 group?

21 A. I was not the main point of contact, that's
22 correct.

23 Q. Talking about UDF -- UDF's loans, you mentioned
24 this a little bit on direct, during the time that
25 you were with Centurion, there was a UDF III loan

1 that Centurion had?

2 A. Correct.

3 Q. And there was a UDF IV loan that Centurion had?

4 A. Correct.

5 Q. And you think V may have been on line?

6 A. Yeah, I don't recall if that fund came on line.

7 Q. As I understand what you told us about III and

8 IV, III was -- I think you described it as a master

9 loan, is that correct?

10 A. Correct, yeah. It was a loan where you could

11 pull off for several different deals.

12 Q. Okay.

13 And that may be the answer, but when you say

14 "master loan," what exactly do you mean by that?

15 A. By that I mean, say you have a master loan for

16 \$100 million. You could pull off \$100 million and

17 fund anything for Deals 1 through 10.

18 Q. Then with IV, was that a project-specific loan?

19 A. Yes. They were the ones I was saying were deal

20 specific, the same thing.

21 Q. And the same question there, what's, to the

22 extent that you know, a project-specific loan? What

23 do you mean by that with IV?

24 A. That you can only pull off that specific loan

25 to pay expenses for that specific project.

1 Q. Meaning that there are different purposes, at a
2 high level, different purposes for UDF III loan
3 versus UDF IV loan?

4 A. Correct.

5 Q. And then if V is on line while you were there,
6 was UDF V also a project-specific loan?

7 A. I don't know.

8 Q. Okay.

9 Your contact with UDF personnel was pretty
10 limited, wasn't it?

11 A. Correct.

12 Q. And by that I mean, very few interactions with
13 them directly.

14 A. Right.

15 I think I had some emails to Tyson, Ben Wissink
16 for a few fundings here or there. I think I copied
17 them on the payroll emails. Because I just saw that
18 in the exhibit. I had limited contact.

19 Q. I'm sorry. Limited contact?

20 A. Limited contact, yes, sir.

21 Q. In looking at those, the loans with UDF, you
22 talked about on direct examination, about -- I
23 guess, first of all, Centurion submitting draw
24 requests to UDF.

25 Do you recall that?

1 A. Yes.

2 Q. And as I understand it, this draw request that
3 you described, they're for, you know, things like
4 payroll, different types of overhead expenses, is
5 that correct?

6 A. Correct.

7 Q. And then you also talked about receiving
8 sometimes draw requests where Centurion received
9 those from UDF?

10 A. Those weren't actual emails. They were just
11 conversations I heard and was there and witnessed.

12 Q. Okay.

13 Were there any conversations where you knew
14 what the types of draws; we have got the payroll
15 requests and the overhead request going from
16 Centurion to UDF.

17 Did you hear anything about the details of what
18 the -- these other draws that would -- requests
19 would be coming from UDF to Centurion, anything
20 about the character of what those would be?

21 A. Yes. They had distributions they had for
22 investors and wanted to discuss potentially doing a
23 draw of the loan.

24 Q. Yes. So it's not for overhead?

25 A. It's not for overhead.

1 Q. It's not for payroll?

2 A. Not for payroll.

3 Q. It's not for keeping the lights turned on or
4 for helping to pay for an engineer on a project, is
5 it?

6 A. Correct.

7 Q. It is instead more loan level as opposed to
8 project level?

9 A. Correct.

10 Q. Did you ever see -- I think you answered
11 this -- did you ever see draw requests coming from
12 UDF or Centurion, or simply hear people talking
13 about it?

14 A. I witnessed them talking about it.

15 MR. ANSLEY: Your Honor, at this time the
16 defense moves for admission of Defense Exhibit 3907.

17 THE COURT: Okay. That will be admitted.
18 3907.

19 MR. ANSLEY: Thank you, your Honor.

20 (The referred-to document was admitted
21 into Evidence as Defense Exhibit 3907.)

22 BY MR. ANSLEY:

23 Q. Sir, on the screen, do you see what that
24 document is, a loan agreement, there at the top?

25 A. Yes.

1 Q. And that's a UDF -- you can see at the top it's
2 Shahan Prairie UDF V loan, 9005.

3 Do you see that?

4 A. Yes.

5 Q. And there are multiple individuals and entities
6 named. Do you see in the first paragraph reference
7 to first the company CTMGT towards the bottom?

8 A. Correct.

9 Q. And who is that? Or what is that?

10 A. Yes, I see CTMGT LLC.

11 Q. And is that the holding company for Centurion
12 American, for lack of a better term?

13 A. Yes, that was a holding company for Centurion
14 American for -- for developments they did with UDF.

15 Q. Okay. And we see Mehrdad Moayedi, who you
16 mentioned on direct as well.

17 A. Yes.

18 Q. And he was the president and CEO of Centurion
19 as well?

20 A. Correct.

21 Q. And he still is?

22 A. Yes, to the best that I recall.

23 Q. Do you show anything about the Shahan Prairie
24 loan agreement here? Any direct --

25 A. Not that I recall.

1 MR. ANSLEY: Turn the page, if you would,
2 Paige -- page 11, please. If we highlight there at
3 the bottom the last paragraph.

4 BY MR. ANSLEY:

5 Q. Read with me, sir, and tell me if I read this
6 right: "Discretionary advances lender" -- and this
7 agreement defines lender as UDF -- "is authorized
8 from time to time to make advances without notice to
9 borrower if lender, in its sole discretion, deems
10 necessary or desirable upon the occurrence of," and
11 then it mentions a number of different types of
12 events.

13 Do you see where I just read?

14 A. Yes.

15 Q. And in this agreement, borrower would be -- we
16 looked at the first page -- borrower is either CTMGT
17 or some -- it's a Centurion American entity?

18 A. Yes.

19 Q. And as I read this, this means the lender, UDF
20 can, and it has the discretion contractually to
21 initiate, on its own, draw requests directed to
22 Centurion American.

23 A. That's how it reads to me.

24 Q. In it's sole discretion is how it reads as
25 well, right?

1 A. Yes, it says: In its sole discretion.

2 MR. ANSLEY: Thank you, sir.

3 Pass the witness.

4 MR. LEWIS: A couple of questions, Judge.

5 Thank you.

6 THE COURT: Thank you.

7 CROSS-EXAMINATION

8 BY MR. LEWIS:

9 Q. Mr. Ford, you knew Ty Walter from UDF?

10 A. Yes.

11 Q. He came him over and worked at Centurion for a
12 while?

13 A. My understanding is he was employed by UDF, but
14 he would be in our offices quite a bit.

15 Q. That's right.

16 And you became friends with him, correct?

17 A. Yes. I mean, I didn't go out and have a beer
18 with him after work, but I liked working with him.

19 Q. That's right.

20 You helped him get a loan from Mr. Moayed, i,
21 right?

22 A. I don't recall doing that.

23 Q. A \$25,000 loan?

24 A. I don't remember.

25 Q. Are you saying it didn't happen or you just

1 don't --

2 A. I don't recall that happening. It could have
3 happened.

4 Q. It could have happened?

5 A. It could have.

6 Q. Okay.

7 But you weren't involved in it, if it did
8 happen, is that what you're telling the jury?

9 MS. JONES: Your Honor, objection,
10 speculation. He said he doesn't recall.

11 MR. LEWIS: I believe he said it might
12 have happened.

13 THE COURT: Overruled.

14 THE WITNESS: Can you repeat the question?

15 MR. LEWIS: Yes.

16 BY MR. LEWIS:

17 Q. Are you saying that it didn't happen or you
18 just don't recall it happening?

19 A. I'm saying I don't recall it happening.

20 Q. But it could have.

21 A. But it could have.

22 Q. Okay.

23 Were you aware of whether or not Mr. Walter had
24 a temper management problem at the times he was at
25 Centurion?

1 A. I'm not aware of that.

2 Q. You didn't hear about him hitting the wall and
3 putting a hole in the wall?

4 A. No.

5 MR. LEWIS: Thank you.

6 THE COURT: Mr. Stephens?

7 MR. STEPHENS: I'm sorry. No, your Honor.

8 MS. JONES: Thank you, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. JONES:

11 Q. Mr. Ford --

12 MS. JONES: Can we have defense
13 Exhibit 3907 again, please?

14 BY MS. JONES:

15 Q. While they're pulling that up, I have another
16 question for you.

17 So you were saying earlier that you left
18 Centurion when?

19 A. Right around July 20, 2015.

20 Q. And at that time was the loan 600 to
21 700 million?

22 A. Yes. That's what I recall it being, yes.

23 Q. And Centurion is in the development business?

24 A. Yes.

25 Q. Approximately how much of Centurion's

1 residential development did UDF have, like, the
2 percentage of their loans?

3 A. I would say anywhere between 70 and 80 percent
4 of the loans that we had were with UDF.

5 MS. JONES: And are we ready on 3907?

6 Can I please have Defense 3907 again? May
7 I borrow that?

8 May I approach, your Honor?

9 BY MS. JONES:

10 Q. This is the exhibit that was just admitted.

11 If you can look at this top section, what day
12 was that loan agreement executed?

13 A. The 9th day of June 2015.

14 Q. And so at the time that this loan agreement was
15 executed, Centurion owed 600 to \$700 million on the
16 loan to UDF?

17 MR. LEWIS: Objection, leading.

18 BY MS. JONES:

19 Q. Is that right?

20 THE COURT: Overruled.

21 THE WITNESS: Correct.

22 BY MS. JONES:

23 Q. And I'm sorry. Can you answer?

24 A. Yes. That's correct.

25 Q. Thank you.

1 And at some point did you have a discussion
2 with the FBI?

3 A. Yes.

4 Q. Did you explain to them what we've talked about
5 today?

6 A. Yes.

7 Q. Approximately when was that?

8 A. I would say it was -- I left around --
9 July 20th. I probably spoke with them two or three
10 days before that.

11 Q. So the loan agreement signed on the 9th day of
12 June 2015, somewhere around July 20th, within a few
13 days of that of 2015, you spoke to the FBI and
14 shortly after that is when you left Centurion?

15 A. Correct.

16 MS. JONES: Thank you.

17 I will pass the witness.

18 MR. ANSLEY: No, your Honor.

19 MR. STEPHENS: No.

20 MR. LEWIS: No.

21 MR. PELLETIER: No, your Honor.

22 THE COURT: Okay. You may step down.

23 Thank you.

24 MS. JONES: Your Honor, may this witness
25 be released?

1 MR. ANSLEY: Yes.

2 MR. STEPHENS: Yes, sir.

3 MR. PELLETIER: Yes.

4 THE COURT: Okay. Yes.

5 MS. LYONS: The Government calls Tyson
6 Walter.

7 THE COURT: Would you raise your hand to
8 be sworn.

9 (TYSON WALTER was duly sworn by the
10 Court.)

11 THE COURT: Sir, you can take off your
12 mask, if you're comfortable, so the court reporter
13 can hear you.

14 THE WITNESS: Thank you.

15 DIRECT EXAMINATION

16 BY MS. JONES:

17 Q. Please state your name for the record.

18 A. Tyson Walter.

19 Q. Mr. Walter, how old are you?

20 A. 43.

21 Q. And do you currently work?

22 A. No, I do not.

23 Q. Can you move that microphone just a little bit
24 closer to you so they can hear you?

25 A. No, I do not.

1 Q. I think the base will move.

2 A. It's at the edge.

3 Q. Okay. All right.

4 And so you currently do not work.

5 In the past, have you worked at a place called
6 United Development Funding?

7 A. Yes.

8 Q. And what did you do for them?

9 A. I was an asset manager.

10 Q. And as an asset manager, what was your job?

11 A. Mainly help underwrite and monitor investments
12 that UDF made.

13 Q. Did you work -- were you the asset manager for
14 a particular borrower at UDF?

15 A. Predominantly one.

16 Q. And what's the name of that borrower?

17 A. That was Centurion.

18 Q. Now, when you worked at UDF, being an asset
19 manager, did you use any financial background to do
20 that?

21 A. Just my schooling. Yes.

22 Q. And let's talk about your schooling.

23 Where did you obtain your undergraduate?

24 A. Ohio State.

25 Q. What was your major?

1 A. I had majors in finance, economics, and risk
2 management.

3 Q. And did you also play football for Ohio State?

4 A. Yes.

5 Q. And did you play football after Ohio State?

6 A. Yes.

7 Q. And so you played in the pros for how many
8 different teams?

9 A. Four.

10 Q. Now, you said you obtained a degree in finance.
11 Would there be times that you would create a
12 cash forma or cash flow projection sheets?

13 A. Yes.

14 Q. Were those Excel spreadsheets?

15 A. Yes, they were.

16 Q. Now, approximately how long did you play
17 football?

18 A. Six seasons in the NFL.

19 Q. And when did you start working at UDF? What
20 year?

21 A. I started doing things with UDF in -- around
22 maybe February of 2004, I believe.

23 Q. And did you leave when?

24 A. I left in '16.

25 Q. Now, approximately what time frame, in that

1 time frame, did you work mainly with Centurion? Or
2 was it the whole time?

3 A. The last few years with UDF, I wasn't doing as
4 much, but up until probably '13, 2013, the whole
5 time at some level involved with Centurion.

6 Q. Now, did -- are you familiar, having worked at
7 UDF, with their basic loan structure in the various
8 funds that they have?

9 A. Yes.

10 Q. Did UDF or Centurion have loans in UDF III?

11 A. Yes, they did.

12 Q. What about UDF IV?

13 A. Yes.

14 Q. And were you there when they had loans with UDF
15 V?

16 A. I can't -- I'm not sure about that. Because
17 UDF V was kind of at the very end, or just after I
18 left, but I -- I don't know exactly.

19 Q. So your work was mainly with UDF IV and UDF
20 III?

21 A. And previous funds, yes.

22 Q. Now, I want to focus in on UDF III and UDF IV.
23 Are you familiar with some of the distinctions
24 between those two funds?

25 A. Yes.

1 Q. What are some distinctions?

2 A. UDF III was more, originally designed to be
3 more of a subordinate lender. And then in the
4 longer term, land development plays, where UDF IV
5 had more ability to get into finished lots and home
6 building as well. And the entire life cycle of
7 development of land in the single family home
8 building.

9 Q. And when you say UDF III was a subordinate
10 lender, explain to the Jury what you mean by that?

11 A. In developments, you get financing, it's like
12 your first lender would be usually a normal bank of
13 some sort, and they would fund the majority of the
14 loan, say, 60 percent.

15 And then if the borrower needed extra financing
16 for funds to develop, then UDF III, in this case
17 that we're discussing, would provide up to another
18 25 percent to get a loan-to-value to a maximum of
19 85 percent.

20 Q. When you say "loan-to-value," what do you mean
21 by that?

22 A. For risk management standards you don't -- no
23 financial institution really, well, especially land
24 development in this industry, loans out 100 or
25 percent or over 100 percent. Usually, for risk

1 management, the total loan-to-value, all that you
2 can put on an asset is 85 percent of the value of
3 that asset.

4 Q. Are you aware of UDF III paying distributions?

5 A. Yes.

6 Q. What about UDF IV?

7 A. Yes.

8 Q. Now, as an asset manager, we talked about
9 earlier how you have to do cash forma projections,
10 cash flow spreadsheets. Are those basically the
11 same thing?

12 A. I believe you were meaning pro formas and cash
13 flows --

14 Q. I was pretty sure I messed that up when I said
15 it.

16 A. Yes.

17 Q. And usually one has a preference of which term
18 they use, right?

19 A. Usually.

20 Q. Okay.

21 MS. JONES: And can we look at
22 Government's Exhibit 246, please?

23 The Government moves to admit 246 and 247.

24 THE COURT: They will be admitted.

25

1 (The referred-to documents were admitted
2 in Evidence as Government's Exhibits 246 and
3 247.)

4 BY MS. JONES:

5 Q. You can look at 246 on your screen. What is
6 246?

7 A. It's an email.

8 Q. And who is it from?

9 A. It's from myself.

10 Q. Who is it to?

11 A. Odette.

12 Q. And who is Odette?

13 A. Odette was another asset manager, as I'm not
14 sure what her --

15 THE COURT: Drop the speed of your answer
16 down so we can hear.

17 THE WITNESS: Yes, sir.

18 Odette was another asset manager.

19 BY MS. JONES:

20 Q. That's perfect, how you just did it. Thank
21 you.

22 Did she also work with Centurion?

23 A. Yes, she did.

24 Q. Now, I'm going to look at this. You have
25 the -- the attachment is T. Walter of UDF number

1 1026, UDF III 1529, UDF 1530. All project roll up.

2 What does that mean?

3 A. Those were three loans that were all together,
4 basic general credit facilities for Centurion.

5 Q. When you say "general credit facilities," what
6 do you mean by that?

7 A. For the most part, they weren't a loan for a
8 specific project; they were a catchall, for lack of
9 a better phrase.

10 Q. So they could -- they have various funds going
11 to different projects?

12 A. Correct.

13 Q. And then what does it mean to be an all project
14 roll up?

15 A. Centurion had many projects with UDF. So what
16 this roll up would do would show the individual
17 loans and projects they had -- investments that UDF
18 had made in them, and how they would repay those
19 individual deals.

20 And that to the point that there was any
21 residual cash flows, those monies from those
22 individual projects would then go and pay down these
23 general credit facilities -- excuse me -- after all
24 of their individual projects were completed.

25 Q. Now, you say, and I want you follow along with

1 me, in the body of the email you say: Sell D172.

2 What is that? Is that a particular part of the
3 spreadsheet?

4 A. It would be, yes.

5 Q. Okay.

6 "It's all you need to know to confirm that it
7 can't work."

8 What did you mean by that?

9 A. That there was an issue with the numbers in
10 that cell and however it was computing at the time.

11 Q. What do you mean an issue? What do you mean it
12 can't work?

13 A. Well, what we're talking about here, I believe
14 was how the cash flows that were supposed to come
15 from individuals, individual projects were flowing,
16 how much money was coming down to repay these three
17 specific loans, which didn't have specific cash
18 flows tied to them from projects.

19 And then how those loans were being compounded
20 and calculated.

21 Q. All right.

22 And then you go on to say: "Using the correct
23 weighted rate as the discount rate, you can only
24 break even if the current principal is 59.8 million
25 or less. These are at 143 million. I'm running a

1 few more scenarios."

2 What do you mean when you say, "You can only
3 break even if the current principal is 59.8"?

4 A. Like with any loan, you have a principal
5 balance. And for these projects, to repay all of
6 the money that was outstanding, which at the time
7 was 143 million, if you use their various interest
8 rates and weigh them properly, that 143 number would
9 not be supported, it could not be repaid, if that
10 was the actual principal balance, which it was at
11 the time.

12 And in this email, I'm saying that the most
13 that 143 could be would be 59.8 million.

14 MS. JONES: So then let's look at
15 Exhibit 247.

16 BY MS. JONES

17 Q. And this dated May 21st, 2012. Again, it looks
18 to be the same numbers. You can follow along with
19 me.

20 Is this to you from Odette Girourd?

21 A. Yes.

22 Q. And here is one scenario, requires a rate
23 reduction on all three loans and leaves no room for
24 error really.

25 Is this her response to you?

1 A. Yes, it is.

2 Q. So what is she saying there, "requires a rate
3 reduction"? What's the conversation you're having?

4 A. So what she's saying is that each of these
5 three loans has a different interest rate, and the
6 correct rates that they were at could not be
7 supported and she's saying that those rates needed
8 to be reduced.

9 And I'm not sure what it -- it doesn't say
10 right here on this email, but she was saying -- she
11 was confirming my earlier email saying that the math
12 didn't work.

13 Q. So overall, was your concern at that current
14 rate that it wouldn't be able to get paid back?

15 A. Yes.

16 Q. Now, did you ever express those concerns to
17 anybody in management at UDF?

18 A. Yes, I did.

19 Q. Who did you express it to?

20 A. Hollis, Ben, Melissa Youngblood, and other
21 asset managers we had obvious conversations about
22 this.

23 Q. Now, first off, let me start, you said "other
24 asset managers." Do you know an individual by the
25 name of Brandon Jester?

1 A. Yes.

2 Q. Do you see him in the courtroom?

3 A. Yes.

4 Q. Okay. Can you please identify him by
5 something --

6 A. Excuse me?

7 Q. Can you please identify him?

8 A. Yes. He's sitting at that table over there.

9 MS. JONES: Let the record reflect that
10 the witness has identified the defendant.

11 BY MS. JONES

12 Q. And what was your relationship to Brandon
13 Jester? What did he do while you were there?

14 A. For the majority of the time he was a fellow
15 asset manager.

16 Q. Did there come a point when he was your
17 supervisor as an asset manager?

18 A. Yes. He was elevated to head of asset
19 management, I believe was the title at the time.

20 Q. I'm sorry, so that last part again.

21 A. I believe his title at the time was head asset
22 manager, head asset manager or something along those
23 lines.

24 Q. Now, so you said that you had discussions with
25 Brandon Jester.

1 A. Yes.

2 Q. And expressed concern that could not be paid
3 off?

4 MR. ANSLEY: Objection, mischaracterizes
5 his testimony.

6 MS. JONES: I can rephrase it, your Honor.

7 BY MS. JONES:

8 Q. What was your discussion with Brandon Jester
9 about these lines?

10 A. The discussion with Brandon was the same at
11 that time. Initially, it was with all asset
12 managers that we had concerns about the Centurion
13 portfolio because, almost all of the asset managers
14 had at least some involvement with Centurion. It
15 was just the amount, I guess you could say.

16 Q. And then you also said Ben. Who is Ben?

17 A. Ben Wissink.

18 Q. And what was Ben Wissink's position?

19 A. I don't recall his exact title. I would call
20 him COO. And I think at on -- I think he became a
21 CEO or president of one of the entities, I'm not
22 sure exactly, but he was over the asset managers.

23 Q. All right.

24 So he was Brandon Jester's boss?

25 A. Yes.

1 Q. All right.

2 And then you said Hollis. Who is Hollis?

3 A. Hollis Greenlaw.

4 Q. Do you see Hollis Greenlaw in the courtroom?

5 A. Yes.

6 Q. Please identify him.

7 A. He's sitting at the table there.

8 MS. JONES: Let the record reflect the
9 witness has identified the Defendant Hollis
10 Greenlaw.

11 THE COURT: Yes.

12 BY MS. JONES:

13 Q. And what was Mr. Greenlaw's position?

14 A. He was founder of UDF and president and CEO.
15 He had a bunch of titles, but he was the head of
16 UDF.

17 Q. What was your conversation with Mr. Wissink
18 about this loan paying off? Was it any different
19 than what you just described with Mr. Jester?

20 A. Mr. Jester initially had the same concerns as
21 the rest of the asset managers. And then when he
22 was elevated, it became less of a concern. Not that
23 it was none, but he took the position of
24 Mr. Greenlaw and Mr. Wissink, where it was, don't
25 worry about it, we'll take care of it.

1 Q. And what was your conversation with
2 Mr. Wissink?

3 A. It was -- whenever it was brought up to
4 Mr. Wissink, he was very dismissive of it.

5 Q. And what about Mr. Greenlaw?

6 A. The same thing.

7 Q. Did you send him copies of your cash flow
8 projections?

9 A. Yes.

10 Q. And was there ever a time that you had to give
11 cash flow projections to the auditors for UDF?

12 A. UDF would -- we, as asset managers, send them
13 usually to Ben or Melissa Youngblood, at one time,
14 and then they would handle the interface with
15 auditors or whoever.

16 Q. Now, and when I say the cash flow projections,
17 are those the types of things that would be sent to
18 the auditors that were in 246 and 247, that the
19 jurors just looked at the emails, with those
20 attachments?

21 A. Yes.

22 Q. Now, as part of your job as an asset manager,
23 did you also look at future projects?

24 A. Yes.

25 Q. And what would you do in analyzing future

1 projects?

2 A. It would just be traditional underwriting. So
3 you would look at what the first of the projects
4 would be: Is it raw land? Are they partially -- is
5 it partially improved land? Are they finished lots?
6 Are we looking at some home building projects or
7 what have you?

8 So you would start there, and then you'd go
9 into the price, the value, how an area is doing
10 economically overall. We would look at how sales
11 for homes have been doing and finished lots, and
12 then you start to evaluate the viability of the
13 investment, whether it's a good idea or not.

14 Q. And would you take make a recommendation on
15 future projects?

16 A. Yes.

17 Q. And were there times that you said you thought
18 a future project was viable?

19 A. Yes.

20 Q. Were there times that you said a future project
21 was not viable?

22 A. Yes.

23 Q. What would happen if you said a future project
24 was not viable?

25 A. If it was a case with Centurion, if Centurion

1 wanted the deal done, they would go over my head and
2 call Mr. Wissink or Greenlaw directly and state
3 their case there, and usually the project would get
4 green lit.

5 Q. It would get what?

6 A. It would get approved.

7 Q. It would get approved, meaning it would be
8 taken on and done?

9 A. Yes.

10 Q. Now, did you have to do anything with draw
11 requests when you were at UDF?

12 A. Yes.

13 Q. What would you have to do?

14 A. I would prepare them.

15 Q. And when you say "prepare them," what do you
16 mean?

17 A. It involves project level -- the borrower, who
18 we had made the loan with would submit invoices from
19 work that had been done on these projects. I would
20 have copies of them, detail it out on a line item
21 basis, make sure -- see whether they fit in terms of
22 the budget of this development or this investment.
23 And then submit them to Ben and then they would get
24 submitted to accounting for funding.

25 MS. JONES: Now, the Government will move

1 to admit Exhibit 241.

2 THE COURT: 241 will be admitted.

3 (The referred-to document was admitted in
4 Evidence as Government's Exhibit 241.)

5 BY MS. JONES:

6 Q. All right.

7 Looking at Exhibit 241, if we can scroll to the
8 second page. Is this an email from you, Mr. Walter?

9 A. Yes.

10 Q. And if we can -- what are the items that are
11 listed on page 2?

12 A. The items are listed are different loans that
13 we have made and how much to advance under those
14 loans.

15 Q. And when it says Terracina, Carter Ranch,
16 Montalcino, Grandbury, High Trophy Development, what
17 are those specifically?

18 A. Those are specific project loans that UDF made
19 to Centurion.

20 Q. So were those land development projects?

21 A. Yes, in some way, shape, or form. I don't
22 recall where this is in the timeline of development
23 in the each of these, but yes.

24 Q. And on each of those, you have an amount listed
25 next to it. Like let's just say, Terracina, for

1 \$190,272.84, and it says "Development draw."

2 What does that mean?

3 A. That means for those -- for those deals that
4 were submitted were for actual development of the
5 project, whether it be putting in sewers or roads or
6 what have you.

7 Q. And then you have under Carter Ranch, 55,000
8 for taxes.

9 A. Uh-huh.

10 Q. What would that be?

11 A. Well, the -- that would be -- because they're
12 paying taxes, obviously, so on an annual basis,
13 those would have to be paid, and that's what that
14 was.

15 Q. You say support is attached?

16 A. Yes.

17 Q. So, for example, what might be the support for
18 that?

19 A. That would be the county tax bill, for
20 instance.

21 Q. Then on UDF III, it says, letter of credit,
22 1530.

23 What is 1530?

24 A. 1530 is what we were referring to earlier in
25 those three. It was a general credit facility for

1 Centurion.

2 Q. It says 905,000, general draw. What does that
3 mean?

4 A. It means, at a certain point, it just became
5 with Centurion, they agreed because Centurion needed
6 so much money for ongoing operations and
7 miscellaneous things that -- that I believe UDF just
8 agreed to limit it to 905,000 on a monthly basis at
9 that time, unless there was something extraordinary.

10 Q. And is one of the general draws, could it be to
11 fund overhead?

12 A. Yes.

13 MS. JONES: And can we please look at 260,
14 which is already in evidence?

15 BY MS. JONES:

16 Q. Do you recognize 260?

17 A. Yes.

18 Q. And, again, is this from Casey Ford?

19 A. Yes.

20 Q. Is it discussing payroll?

21 A. Yes, it is.

22 MS. JONES: Back to 241.

23 BY MS. JONES:

24 Q. On page 1, so you've asked for those draws.

25 And then without going into it, do you have a

1 correction on one of them that you give to Cheryl?

2 A. Yes.

3 Q. All right.

4 And then who is Cheryl Cox up in the "to"?

5 A. She was an accountant at UDF.

6 MS. JONES: And then if we can scroll up,
7 please.

8 BY MS. JONES:

9 Q. And is there a response to your email from Ben
10 Wissink?

11 A. Yes, there was.

12 Q. This is on 1/27/2012. Please read along with
13 me: "Tyson, UDF III doesn't have the capital to
14 fund these draws. What avenues do we have for
15 UDF IV to fund a repayment on CTMGT to provide
16 capital to UDF III on Monday morning?"

17 What are y'all discussing?

18 A. That is saying that -- so 1530, the 15 notation
19 at the front of the loan, it was a UDF III loan.
20 And so what he's saying here, that 1530, which is
21 UDF III, doesn't have the money to fund that general
22 draw that you spoke of previously.

23 And he's saying what loans does Centurion have
24 with UDF under UDF IV that that money could be
25 advanced to Centurion under UDF IV, and then

1 Centurion would turn around and repay it on some
2 UDF III facility so then it could be readvanced.

3 Q. Now, we just talked about the draws that you
4 would do.

5 Were there ever times there were draws that you
6 did not start for deals like this?

7 A. Repeat your question. I'm sorry.

8 Q. So were there any draw requests that you had to
9 handle that were not with regard to this type, where
10 it had a bill attached to it for some development?

11 A. Yes.

12 Q. And what were those?

13 A. There would be times when Ben, Ben Wissink
14 would send an email to me saying, for example,
15 distributions need to be funded, I'm coming up, so
16 get an advance for \$2 million to Centurion so we can
17 do that. And funnel that around so we can fund
18 distributions out to the various UDF funds.

19 Q. And what would you have to do to make that
20 happen?

21 A. I would -- I would make draw requests. I would
22 take it to Mehrdad Moayedi of Centurion. He would
23 sign it usually and then send it back to UDF.

24 Q. Was there anything unusual about when you would
25 take it to him to get it signed?

1 A. They would have it around times of when
2 distributions were made. I don't remember if it was
3 exactly the end of the month or the third week of
4 the month or what have you, but it was consistent.

5 Q. Now, you said earlier you would sometimes have
6 to give your cash flow projections to the auditors.

7 Do you recall having any conversations with
8 anyone about the auditors in management?

9 A. There would be conversations with them leading
10 up to talking about, just reaffirming that everybody
11 gets them done and submits them on a timely basis
12 and then there would be conversations ongoing, if
13 they needed something, or if they had other
14 questions.

15 Q. Did you have conversations with Ben Wissink
16 about auditors?

17 A. Yes. He would be involved in those
18 conversations.

19 Q. What about Hollis Greenlaw?

20 A. He would comment on those conversations.

21 Q. Were there ever times that the auditors had
22 questions?

23 A. Yes. My understanding.

24 Q. And you say your understanding, were you
25 sometimes given -- why would it be your

1 understanding?

2 A. Because the interfacing --

3 MR. LEWIS: Objection, unless there's a
4 predicate laid, your Honor.

5 THE COURT: You can answer this question.
6 Why would you -- the question was, why did you
7 qualify it as your understanding?

8 BY MS. JONES:

9 Q. Yes. Why did you know that the auditors had
10 questions?

11 THE COURT: Overruled.

12 THE WITNESS: Because it was brought up by
13 Ben or Hollis or Melissa Youngblood, when she was
14 involved with these situations.

15 BY MS. JONES:

16 Q. Did you say "Ben"?

17 A. Ben, yes.

18 Q. All right. I just wanted to make sure.

19 A. I'm sorry. My throat's a little dry.

20 Q. And so you had discussions with Ben Wissink or
21 Hollis Greenlaw about it?

22 A. Yes.

23 Q. All right.

24 I want to zone in on some of those discussions.
25 Did they talk to you about the questions?

1 A. They would bring them up.

2 Q. What would they say?

3 A. They were -- they would say that the auditors
4 had questions, and they would say how they didn't
5 understand how the UDF businesses were working and
6 that it was -- they would laugh at them because then
7 there were specific comments made that the auditors
8 would just give up, because they didn't understand
9 it enough and then move on, basically.

10 Q. What do you mean them to move on?

11 A. The auditors would just stop asking questions,
12 because regardless what answers they were provided
13 with, they still didn't understand the replies that
14 UDF was providing. And so they were kind of mocking
15 the fact that they didn't understand them, and the
16 auditors would just stop their lines of questioning
17 because they were frustrated or what have you.

18 Q. And so what would happen when they stopped
19 their lines of questions, according to Mr. Greenlaw
20 and Mr. Wissink?

21 A. That they would move on and basically they
22 would just proceed with -- with whatever else they
23 were doing in the audit.

24 Q. And so what would happen to their questions?

25 A. As far as I know, they wouldn't get answered.

1 Q. All right.

2 And that's from what Mr. Wissink and
3 Mr. Greenlaw would say?

4 A. Yes.

5 Q. All right.

6 MS. JONES: Thank you, sir.

7 I pass the witness.

8 CROSS-EXAMINATION

9 BY MR. LEWIS:

10 Q. When and where did that last conversation occur
11 with Mr. Wissink?

12 A. Those would have been --

13 Q. When and where exactly?

14 A. I do not have an exact date and time.

15 Q. Do you have a single piece of paper or email
16 that substantiates your testimony what the
17 prosecutor just brought out?

18 A. I don't have any emails.

19 Q. No.

20 And, in fact, you've met with the prosecutors
21 several times, haven't you?

22 A. Yes.

23 Q. They've gone over emails with you, correct?

24 A. I have had conversations with prosecutors.

25 Q. You're telling the Jury that they have not

1 shown you any papers?

2 A. They have shown me the exhibits that I just
3 saw.

4 Q. Of course. They have shown you emails,
5 correct?

6 A. They have shown me emails, yes.

7 Q. And you met with the FBI as well, correct?

8 A. I just remember being with attorneys. I don't
9 know who else was -- I don't recall.

10 Q. Do you recognize an FBI agent at the table?

11 A. I'm honestly not sure who works for whom.

12 Q. Okay.

13 Did you meet with any of these three or four
14 ladies at the table?

15 A. The attorney who was just questioning me, yes.

16 Q. How many times did you meet with her?

17 A. I can't recall off the top of my head. At
18 least once.

19 Q. Could it be more than once?

20 A. It's possible.

21 Q. Does your memory fail you, sir?

22 A. I just don't recall how many times I've met
23 with the attorney.

24 Q. You tried to actually to get out of testifying
25 down here today, didn't you?

1 A. No. I have never tried to get out of
2 testifying.

3 Q. Didn't you instruct your attorney to let the
4 Government know that your memory was failing?

5 A. No. I did not try to get out of this
6 testimony.

7 MR. LEWIS: May I have one moment, Judge?
8 May I approach, Judge?

9 BY MR. LEWIS:

10 Q. If I showed you an FBI report, might that
11 refresh your memory?

12 MS. JONES: Your Honor, I'm going to
13 object. He said FBI report.

14 THE COURT: You can show him that and ask
15 him if that refreshes his memory.

16 MR. LEWIS: Yes, sir.

17 THE COURT: Go ahead and show him that.

18 So, sir, he's going to point you to read
19 something, and then the question will be, does that
20 refresh your memory about the subject? Either it
21 does or it does not.

22 BY MR. LEWIS:

23 Q. Sir, does that refresh your recollection?

24 A. Could you repeat the question? Regarding?

25 Q. Whether or not you instructed your attorney to

1 call the Government and tell them you had memory
2 problems?

3 A. I did not instruct my attorney to say anything.

4 Q. Your attorney is Cameron Smith, is that
5 correct?

6 A. Yes.

7 THE COURT: Well, hold on. Let me just
8 stop you.

9 So the question -- the question Mr. Lewis
10 initially asked was, did you seek to not testify
11 because you had memory loss? Okay.

12 Now, the question is, now that you have
13 read that document, okay? Does that refresh your
14 memory about whether you said this or not? That's
15 the question. Does that refresh your memory about
16 whether you said this or not?

17 THE WITNESS: About whether -- hold on.
18 I'm sorry. I'm confused.

19 Are we saying -- can you repeat what you
20 just said?

21 THE COURT: So does that refresh your
22 memory about this subject that Mr. Lewis has brought
23 up? That's the only question. Does it refresh your
24 memory? Does it cause your memory to recall you
25 saying that?

1 THE WITNESS: What I said to my attorney?

2 THE COURT: On this subject.

3 THE WITNESS: We discussed that situation,
4 but it was never an attempt to get out of anything.

5 THE COURT: Did you say you had memory
6 loss? Let's put it that way.

7 THE WITNESS: It was a conversation with
8 my attorney. I don't know if you -- isn't that -- I
9 don't know if that's privileged or -- I'm confused.

10 MS. JONES: Your Honor, I'm going to
11 object with regard to the specific conversation with
12 his attorney. I don't have an objection if
13 Mr. Lewis asks if he has memory issues, but I think
14 the question --

15 THE COURT: Well, all I'm saying is if --
16 if this gentleman's attorney has conveyed
17 information about what this witness has said to
18 people outside of the privileged environment, then
19 it's not privileged.

20 And I understand Mr. Lewis to be saying he
21 has some information that indicates this statement
22 was conveyed to someone in the Government. So
23 that's what I understand the lay of the land to be.

24 MS. JONES: Yes.

25 THE COURT: And so he's now asking this

1 witness, did the witness say it. I think it is
2 proper for Mr. Lewis to inquire about whether the
3 witness has told his lawyer, which has since been
4 waived, that privilege has since been waived, about
5 whether this witness has had memory loss.

6 And so that's the question to you, sir.
7 Have you conveyed that you had memory loss?

8 THE WITNESS: I have conveyed to my
9 attorney that I have memory issues.

10 THE COURT: Okay. Very good.

11 BY MR. LEWIS:

12 Q. You knew Casey Ford at Centurion?

13 A. Yes.

14 Q. Were you friends?

15 A. Just acquaintances.

16 Q. Did Casey help you get a loan?

17 A. Casey -- there was a loan.

18 Q. Yes. And that loan that Casey -- by the way,
19 do you know that Casey just testified before this
20 Jury?

21 A. Yes.

22 Q. Because you were outside and you watched him
23 come in and you watched him go out, correct?

24 A. Yes.

25 Q. And your testimony to these Ladies and

1 Gentlemen is that Casey helped you get a loan?

2 A. Yes.

3 Q. And that loan was for \$25,000?

4 A. I believe that was the amount.

5 Q. And the loan was from the owner of Centurion,
6 correct?

7 A. I believe.

8 Q. That's correct, isn't it, sir?

9 A. I believe so.

10 Q. And that's where Casey worked, at Centurion,
11 correct?

12 A. Yes.

13 Q. And you know that Casey didn't tell the owner
14 of Centurion about that \$25,000 loan, that's true,
15 too, isn't it, sir?

16 A. I do not know what Casey said.

17 MR. LEWIS: Nothing further.

18 MR. STEPHENS: No questions, your Honor.

19 MR. ANSLEY: Yes, your Honor, please.

20 CROSS-EXAMINATION

21 BY MR. ANSLEY:

22 Q. Mr. Walter, you talked earlier about Brandon
23 Jester. The fact is, he was never an asset manager
24 for the Centurion account, was he?

25 A. He had projects with Centurion that were

1 Centurion's or were -- Centurion was involved in.

2 Q. But he was not things asset manager for those,
3 it was other people at that level?

4 A. From my recollection, Centurion ended up doing
5 things with Brandon, I believe, in Austin, some of
6 the areas where he primarily focused. There wasn't
7 a single one Centurion asset manager.

8 Q. So Centurion had projects in Austin?

9 A. Yes, I believe -- yeah, I think they had
10 projects down there. They took some over at some
11 point for other issues, from my recollection.

12 Q. Which projects were those, sir?

13 A. I don't recall off the top of my head.

14 Q. Do you know when that was the Centurion had
15 these projects in Austin?

16 A. Probably -- I mean, it was when I was at UDF.

17 Q. Okay. Which was -- what was that date range?

18 A. The very first was, like I said, probably
19 around February of 2004, and then actively, like,
20 2013, 2014.

21 Q. So between 2004 and 2013 or so Centurion had
22 projects in Austin?

23 A. There were some.

24 Q. You talked about future projects.

25 Your testimony was they could be viable, is

1 that correct?

2 A. They could be.

3 Q. Sometimes -- sometimes you said no.

4 A. I would say no, sometimes, yes.

5 Q. And by sometimes you would say no, would you
6 say no, is that to Centurion, when you're saying no?

7 A. I would say that I don't recommend them. It
8 would still be brought up to UDF, and then it would
9 be an opinion there.

10 Q. Would you bring it up to UDF yourself?

11 A. I would bring some up to UDF, but they were --
12 like I mentioned, Centurion, the principal, Mehrdad
13 Moayedi had close contact with Mr. Wissink and
14 Mr. Greenlaw, specifically.

15 Q. What you're saying is that Mr. Moayedi would go
16 over your head at UDF and cause these projects to be
17 included on these analysis?

18 A. Yes.

19 Q. And how often did that happen?

20 A. Several times. I couldn't between give you an
21 exact number.

22 Q. And that's after you, the UDF employee said no,
23 Centurion made it happen?

24 A. They would call and speak to benefits and try
25 to discredit me, or my assumptions because, when

1 you're investing, you have to make assumptions.

2 Q. Were you ever part of those conversations?

3 A. On some occasions.

4 Q. How often?

5 A. I couldn't give you an exact number.

6 Q. Okay. Was it always for Centurion, was it
7 always Mr. Moayedhi?

8 A. How so? I don't understand what you're asking,
9 I'm sorry.

10 Q. Those conversations, when Centurion is going
11 over your head at UDF and making UDF do something,
12 is it always Mr. Moayedhi doing it?

13 A. He would be the one, but I wouldn't say that he
14 made UDF do anything.

15 Q. You had said no. He goes over your head and it
16 happens? Is that fair?

17 A. I don't -- he doesn't make them do anything.

18 Q. You talked about the auditors earlier, these
19 are the auditors for UDF, correct?

20 A. They were auditing UDF, yes.

21 Q. Which firm was that?

22 A. I believe it was Whitley Penn.

23 Q. Okay.

24 Did you ever talk to the auditors yourself at
25 Whitley Penn?

1 A. No, I did not.

2 Q. No communications, meetings, any contact
3 whatsoever of any kind?

4 A. No. Not that I recall.

5 Q. Okay.

6 And your testimony is that you discussed
7 auditor communications that Mr. Greenlaw and
8 Mr. Wissink had, and they would basically laugh at
9 the auditors' lack of understanding of UDF's
10 business?

11 A. At points, yes.

12 Q. And your understanding, your testimony is that
13 that somehow made the auditors just stop asking
14 questions?

15 A. That's what they said.

16 Q. "They said" being who?

17 A. Hollis and Ben.

18 Q. Isn't it, if you know this, isn't the job of
19 auditors to ask questions of their audit clients?

20 A. It is to ask, but the connotation and the
21 comments were that they stopped asking while they
22 still didn't understand.

23 Q. But you never spoke directly with the auditors
24 a single time in your life?

25 A. No.

1 Q. So whether or not they stopped asking
2 questions, whether or not their questions were
3 answered, you simply directly do not know that, even
4 a little bit, do you?

5 A. Unless Mr. Greenlaw and Mr. Wissink were lying
6 when they made those statements. That's what I'm
7 going off of.

8 Q. I mean directly, sir.

9 A. Directly from the auditors, no.

10 MR. ANSLEY: Okay. Thank you, sir.

11 Pass the witness.

12 CROSS-EXAMINATION

13 BY MR. PELLETIER:

14 Q. Mr. Jester was your boss?

15 A. He became head of asset management toward the
16 very tail of my time at UDF.

17 Q. Who was your boss?

18 A. Hollis and Ben.

19 Q. You reported to Mr. Greenlaw?

20 A. At different times.

21 Q. And so what was Mr. Jester's relationship to
22 you?

23 A. For the majority of the time, he was an asset
24 manager like I was.

25 Q. Oh. And how about Ben Wissink? Did you report

1 to him?

2 A. Yes. He was over asset managers.

3 Q. So he was your boss?

4 A. There were multiple bosses.

5 Q. Well, how many meetings did you have -- you
6 weren't part of the audit function at UDF, were you?

7 A. I prepared information that was used in audits.

8 Q. Okay.

9 And how many meetings did you have with
10 Mr. Greenlaw about the audit, the documents prepared
11 for the audit function?

12 A. Since they were on a yearly basis, it was a few
13 times over the years.

14 Q. All right.

15 Do you remember this particular meeting that
16 you're talking where people were yucking it up about
17 the auditors not understanding their complicated
18 business?

19 A. Yes.

20 Q. What day was that?

21 A. I don't know the exact date. I remember the
22 situation, though.

23 Q. Well, you don't remember how many times you met
24 with the prosecutor, right?

25 A. With that specific prosecutor, no, I don't know

1 the names of everybody I met with.

2 Q. And that was pretty recent, right?

3 A. Well, yesterday. I remember that.

4 Q. Yes.

5 And --

6 MR. ANSLEY: Your Honor, I apologize.

7 May we approach briefly?

8 (The following proceedings were had at
9 sidebar without being reported:)

10 BY MR. PELLETIER:

11 Q. Mr. Walter, do you know what year this meeting
12 was with Mr. Greenlaw when he told you this?

13 A. I can speculate roughly.

14 Q. All right.

15 And he, Ben Wissink, and Brandon Jester all
16 told you the exact same story, the exact same thing?

17 A. It was the situation that we're talking about
18 now, it was during an asset manager meeting when
19 everybody was there. In this case, Mr. Jester was
20 not, this was Mr. Wissink and Mr. Greenlaw, but the
21 ones that were making the --

22 Q. So it was Mr. Wissink was there and
23 Mr. Greenlaw was there.

24 You just don't remember when?

25 A. Like I said, I couldn't speculate, but I don't

1 remember exactly.

2 MR. PELLETIER: No further questions.

3 MS. JONES: May I have moment?

4 No further questions, your Honor.

5 THE COURT: Okay. Thank you, sir.

6 MS. JONES: Your Honor, may this witness

7 be excused?

8 MR. STEPHENS: Yes, sir.

9 MR. LEWIS: Yes, sir.

10 MR. PELLETIER: Yes, your Honor.

11 THE COURT: Yes, you are free to go.

12 MS. EGGERS: Ty Fowle.

13 (TY FOWLE was duly sworn by the Court.)

14 DIRECT EXAMINATION

15 BY MS. EGGERS:

16 Q. If you would, go ahead and state your name.

17 A. Ty Fowle.

18 Q. And you are going to have to speak up.

19 A. Ty Fowle.

20 Q. Okay. Pull it a little bit closer. Sorry.

21 It's a large room and the floors make it hard to
22 hear.

23 A. I understand.

24 Q. You said Ty Fowle, is that correct?

25 A. That's right.

1 Q. And, Mr. Fowle, where do you work?

2 A. For UDF.

3 Q. Okay.

4 And how long have you worked for UDF?

5 A. Since October of 2008.

6 Q. And what position do you hold with UDF?

7 A. IT director.

8 Q. And are you a full-on employee? Are you a

9 contract employee? How does your --

10 A. I'm a contractor, yes.

11 Q. Make sure you let me finish because that poor

12 lady's got 12 keys for the whole alphabet. It's

13 very tough. I don't understand how they do it,

14 okay.

15 You said you're a contract employee?

16 A. Correct.

17 Q. You said your position again is what?

18 A. IT director.

19 Q. IT manager?

20 A. Director, yes.

21 Q. IT director.

22 And have you held that position your entire

23 time with UDF?

24 A. Yes.

25 Q. Were you working at the UDF offices on

1 February 18th of 2016?

2 A. Yes.

3 Q. And what is the address of y'all's office
4 there?

5 A. 1301 Municipal Way, Grapevine, Texas.

6 Q. So it's here in the Northern District of Texas
7 in Grapevine, is that correct?

8 A. Yes.

9 Q. On that date, February 18, 2016, was a search
10 warrant executed by the Federal Bureau of
11 Investigation?

12 A. Yes.

13 Q. And were you present you said?

14 A. Yes.

15 Q. And once the FBI got there, did you work with
16 the FBI, the members of the FBI that were looking
17 for the digital media to be able to make images of
18 the digital media that were there at the office?

19 A. Yes.

20 Q. And were you helpful and walked them around and
21 everything?

22 A. Yes.

23 Q. Okay.

24 And as a part of your helping them so that they
25 could get the materials pursuant to the search

1 warrant, did you provide them with a copy of PST or
2 Outlook files for various UDF employees?

3 A. Yes. At the instruction of Mr. Thomas Tedder.

4 Q. I can't hear you.

5 A. Thomas Tedder, the agent in charge, I followed
6 his direction and provided the PST files as
7 instructed.

8 Q. Okay.

9 You did that on that day, on February 18, 2016?

10 A. Yes.

11 Q. Okay. And was it like a hard drive or
12 something that you gave to him or what?

13 A. I copied the files and then he provided the
14 hard drive to copy them on to.

15 Q. Okay.

16 And, Mr. Fowle, I'm going to bring you
17 something real quick, all right?

18 A. Yes.

19 MS. EGGERS: Your Honor, if I may
20 approach. I will get this later on. It is a Court
21 exhibit, not as an actual trial exhibit.

22 BY MS. EGGERS:

23 Q. Mr. Fowle, if you would look at what I will
24 mark as Court exhibit -- Government Exhibit B.

25 A. Okay.

1 Q. Did you prepare an affidavit as a part of this
2 case?

3 A. Yes.

4 Q. Okay. And attached to -- sorry. Attached to
5 your affidavit is there a two-page list of various
6 government exhibits?

7 A. Yes.

8 Q. And prior to this trial starting, did you
9 actually go to the US Attorneys Office and look at
10 all of those exhibits that are on that attachment?

11 A. I did.

12 Q. And when you looked at all of those exhibits,
13 and then pages of certain exhibits that are on that
14 attachment, were you able to confirm that those
15 actually were, not all, obviously, but were those
16 emails that had been placed on the hard drive by you
17 and given to Special Agent Tom Tedder?

18 A. Yes. With reasonable certainty.

19 Q. Say that again?

20 A. With good certainty, yes.

21 Q. You don't have reason to believe any of them
22 have been manipulated or anything, do you?

23 A. I don't.

24 Q. Okay.

25 So that two-page list, those are just

1 Government exhibits, Government exhibits that are
2 identified, and when it gets to Government's
3 Exhibit 350, to Government's Exhibit 409, there were
4 just certain pages in those that you were able to
5 confirm that those were emails -- not your emails --
6 but --

7 A. In the UMTH email system, yes.

8 Q. I cannot hear you.

9 A. In the UMTH email system, yes.

10 Q. And UTMH, is that one of the UDF entities?

11 A. It's the domain that they're under, the
12 UMTH.com.

13 Q. Okay. It would be TyFowle@UMTH.com?

14 A. Correct.

15 Q. And so those emails then, were those records
16 made and kept in the normal course of UDF's
17 business?

18 A. That's correct.

19 Q. And you, as the IT director, you would be the
20 one to sort of know how those are kept, is that
21 right?

22 A. That is correct.

23 MS. EGGERS: Your Honor, if I may have one
24 moment.

25 If I may have one moment, your Honor?

1 Nothing further, Mr. Fowle.

2 THE COURT: Okay.

3 MS. ROMERO: One second, your Honor.

4 CROSS-EXAMINATION

5 BY MS. ROMERO:

6 Q. Mr. Fowle, I understand you said that you've
7 been working there since February -- since 2008, is
8 that correct?

9 A. That's correct.

10 Q. What, that's almost 14 years.

11 A. That's correct.

12 Q. And you work there now, today?

13 A. Yes, I do.

14 Q. And today UDF still sits there on Centurion
15 Drive, is that correct?

16 A. Municipal Way.

17 Q. I'm sorry. Municipal Way.

18 And they're still doing business?

19 A. Yes.

20 Q. The same business they were in, that is loaning
21 money to developers to build homes, to build
22 communities in North Texas, and I guess they've
23 spread out to other states as well, is that correct?

24 A. That's correct.

25 Q. Now, the prosecutor asked you about the search

1 warrant that happened in February of 2018. I
2 believe it was February 8th. Is that correct?

3 A. February 18th.

4 Q. February 8th -- 18th, 2018.

5 A. 2016.

6 Q. I'm sorry. I've got this all backwards here.
7 It's late in the day.

8 So that's more than what? Four years ago, I
9 guess.

10 A. Six years ago.

11 Q. So, in those six years, have you been a part of
12 the employees at UDF cooperating with the Government
13 providing documents, et cetera?

14 A. Yes. Everything requested of me I have
15 provided.

16 Q. Okay. And what about other employees at UDF,
17 are you aware of --

18 MS. EGGERS: Objection, your Honor,
19 outside the scope.

20 THE COURT: Overruled.

21 BY MS. ROMERO:

22 Q. Are you aware of whether any other employees
23 have also worked to cooperate with the Government
24 whenever asked?

25 A. Everything to my knowledge, yes.

1 Q. And before the search warrant that the
2 prosecutor brought up, February 18, 2016, did UDF
3 cooperate with authorities at that time by providing
4 documents whenever asked?

5 A. Yes.

6 Q. And were you a part of that?

7 A. Yes.

8 Q. Are you aware of whether or not any employees,
9 before the search warrant, after the search warrant,
10 up to today, have ever hid or concealed any
11 documents, anything in the UDF files, the UDF
12 servers, their hard copies in their filing cabinets,
13 from the Government authorities in any way?

14 A. No.

15 Q. Okay.

16 What about any accountants in any way?

17 A. No.

18 Q. What about any of your auditors, if they've
19 ever asked?

20 A. No.

21 Q. What about any regulators, have you hid or
22 anybody at the company that you know of, hid any
23 documents or concealed anything?

24 A. No. Nothing.

25 Q. Was there a shred party ever going on in the

1 six years that UDF has been under investigation?

2 A. No.

3 Q. Did Mr. Greenlaw ever ask you to hide anything
4 or do anything like that, shred documents, hide
5 anything?

6 A. Never.

7 Q. What about any of the other defendants sitting
8 here today?

9 A. No.

10 Q. Cara Obert? Brandon Jester? Ben Wissink --
11 I'm sorry? Can you say -- are you saying no? I
12 know you're shaking your head, but --

13 A. No.

14 MS. ROMERO: I have no further questions,
15 your Honor.

16 MR. STEPHENS: No, your Honor.

17 MR. LEWIS: No, sir.

18 REDIRECT EXAMINATION

19 BY MS. EGGERS:

20 Q. Mr. Fowle, let me ask you, who are you talking
21 about that members of UDF provided records to the
22 Government before the February 18th, 2016 date?

23 A. I'm sorry. I'm not sure what you're asking.

24 Q. Well, Ms. Romero was asking you a series of
25 questions about folks providing records before the

1 search warrant was executed.

2 Do you recall that?

3 A. I do recall that, yes.

4 Q. Do you know who UDF was providing records to
5 before that search warrant was executed?

6 A. The attorneys would ask for certain email
7 records. And I don't -- and I would provide the
8 attorneys the records that they asked for.

9 THE COURT: She's not asking about you.
10 She's asking about others. Do you know who, others,
11 provided this information?

12 THE WITNESS: You mean who was requesting
13 information?

14 THE COURT: No, no. You were telling
15 Ms. Romero that other people cooperated, other
16 people provided documents, she's asking who are
17 those other people.

18 THE WITNESS: Everybody at the company
19 that work -- I mean, I can name all of the
20 executives, if you want.

21 BY MS. EGGERS:

22 Q. Well, my question is, who were they providing
23 the records to?

24 A. I don't know that I can answer the question.

25 Q. Okay.

1 So you're not suggesting that people at UDF
2 were providing records to the FBI, or the US
3 Attorneys Office before the execution of the search
4 warrant?

5 A. Like I said, I worked with the attorneys on the
6 media side. So I would provide the documents. I
7 didn't always know who they were requesting the
8 documents for.

9 MS. EGGERS: Thank you, sir.

10 THE COURT: Okay, anything else?

11 MS. ROMERO: Nothing further.

12 MS. EGGERS: No further, your Honor.

13 The Government call Special Agent Thomas
14 Tedder.

15 THE COURT: Can you raise your hand to be
16 sworn.

17 (THOMAS TEDDER was duly sworn by the
18 Court.)

19 DIRECT EXAMINATION

20 BY MS. EGGERS:

21 Q. If you would, go ahead and state your name.

22 A. Thomas Tedder.

23 Q. And how are you employed, sir?

24 A. I'm a supervisor special agent with the FBI.

25 I'm also the North Texas Regional Computer

1 Laboratory Forensics Director.

2 Q. And how long have you been a special agent with
3 the FBI?

4 A. A little over 21 years -- 23 years now, I'm
5 sorry.

6 Q. And you said you're the regional director of
7 what, again?

8 A. North Texas Regional Computer Forensics
9 Laboratory.

10 Q. Is that the FBI's laboratory that's here local
11 or what is that?

12 A. It is a coordinated effort. It's not just the
13 FBI laboratory; we also have local police
14 departments involved in the laboratory as well.

15 Q. And do y'all work on processing electronic
16 evidence and that type of thing when they're
17 obtained?

18 A. All types of digital evidence, yes, that's
19 correct.

20 Q. And how long have been the director?

21 A. I have been the director since October of 2019.

22 Q. And have you received -- so before October of
23 2019, what, if any, involvement did you have with
24 the RCFL before then?

25 A. Digitally speaking, I was certified in 2006

1 through IACIS, as a certified computer forensics
2 expert. "IACIS" stands for International
3 Association of Computer Investigative Specialists.

4 Then in 2008, I was certified again as a CFCE
5 through the FBI's CART program. CART is the
6 Computer Analysis Response Team.

7 Q. And so you said that started, approximately,
8 when did your certifications --

9 A. First, in 2006 through IACIS. And then again
10 in 2008 through the FBI's CART program.

11 Q. And did you, in that capacity with the RCFL --
12 I'm going to abbreviate it -- the North Texas RCFL
13 --

14 A. We call it the NTRCFL.

15 Q. Okay. Did you -- were you involved in the
16 execution of the search warrant at UDF, the UDF
17 offices on February 18th, 2016?

18 A. I was.

19 Q. Okay. And if you would just generally describe
20 what steps you took that day on February 18th, 2016.

21 A. We were there to assist the seizing agents with
22 identifying digital evidence at the location, and
23 either imaging it on site mor determining whether we
24 need to take it back to the laboratory to image it
25 back at the lab.

1 Q. Okay. And we just have just met a man by the
2 name of Ty Fowle. I think y'all passed as you were
3 coming in.

4 Was there somebody on site at UDF when y'all
5 executed the search warrants that assisted so y'all
6 could find the various servers and know where things
7 were located?

8 A. Mr. Fowle did assist us with the execution of
9 certain parts of the search warrant, yes.

10 Q. And what about email accounts? PST files or
11 Outlook accounts, did he assist in any way regarding
12 that?

13 A. He did.

14 So using the search warrant, we identified 24
15 accounts that we needed to be PST files, personal
16 storage tables that we needed to be downloaded. We
17 provided them with a forensically-wiped 2 terabyte
18 hard drive, which he was able to then take those
19 files off of the server and download those for us.

20 He is actually as the systems admin, understood
21 where those files were at much quicker than we
22 would. So he was able to take those files and put
23 them on a hard drive for us before we brought the
24 server down.

25 Q. And then so we're going to talk about that. So

1 did y'all that hard drive with you that day, of the
2 PST files?

3 A. We did not take the drive hard. We gave it to
4 the seizing agents and they took it.

5 Q. I'm sorry. I say y'all, I mean the FBI.

6 So just that was given to the seizing agent
7 that day?

8 A. That's correct.

9 Q. And then in addition to that, so that the PSTs.

10 Did y'all -- and I say y'all, now I'm meaning
11 you -- did you and the other members of the RCFL do
12 any forensic analysis and try to image the servers
13 or the electronic media that was there at UDF?

14 A. We tried to image some of the cell phones and
15 some of the computers in the offices on site.
16 Quickly determined we were going to have to take the
17 servers and several of the computers back to the lab
18 to do imaging, and that was just based on time.

19 In total, it took us almost a week to image
20 everything, which means if we had stayed on site, we
21 would have had the business shut down for a week.

22 Q. And then once everything was imaged, were the
23 items then returned?

24 A. The items were then returned to the seizing
25 agents, on site at the RCFL. They came over and we

1 turned them over to UDF personnel.

2 Q. Now, again, we'll talk about the emails in just
3 a little bit. But are there certain Government
4 exhibits that you've had an opportunity to review
5 prior to coming here today, so that you could tell
6 the members of the Jury where certain items that
7 were electronically seized were actually located,
8 either on a hard drive or on a server, that type of
9 thing?

10 A. I was.

11 Q. Okay.

12 And was there -- let me ask you this: As a
13 part of the process, the general process of
14 executing a search warrant, is there some kind of
15 drawing or map or something so we know where
16 different rooms are?

17 A. Yes. As far as -- as part of a search warrant,
18 there is a person on our team that will go ahead and
19 document the layout of the location. In this case,
20 the UDF location.

21 MS. EGGERS: Your Honor, at this time, I
22 would ask to admit Government's Exhibit 110.

23 THE COURT: Okay. 110 will be admitted.

24

25

1 (The referred-to document was admitted in
2 Evidence as Government's Exhibit 110.)

3 BY MS. EGGERS:

4 Q. And Special Agent Tedder, looking at
5 Government's Exhibit 110, the address, was it
6 1301 Municipal Way, Grapevine, Texas, which is in
7 the Northern District of Texas?

8 A. That is correct.

9 Q. And this first page, it says page 1 of 2, of
10 the diagram sketch, was it a two-story, two-story
11 office space?

12 A. That is correct. That's actually the second
13 story, I believe.

14 Q. I've got it very small. So I apologize.
15 So is each room actually labeled with a number
16 and a letter?

17 A. That is correct.

18 Q. Let's go to -- then the third page of this, is
19 there a list so we can see something was found, what
20 room it was found in?

21 A. That is correct.

22 MS. EGGERS: Your Honor, at this time I
23 would ask to introduce Government's Exhibit 87 into
24 evidence.

25 THE COURT: 87 will be admitted.

1 (The referred-to document was admitted in
2 Evidence as Government's Exhibit 87.)

3 BY MS. EGGERS:

4 Q. Since y'all were doing a search of electronic
5 media, were there various spreadsheets that were
6 seized and that have now been marked as exhibits in
7 this case?

8 A. That's correct.

9 Q. And looking at Government's Exhibit 87, are you
10 able to tell members of the Jury where that looks
11 like some type of Excel spreadsheet called Cash
12 Outflows at the top? Are you able to tell them
13 where that item was seized?

14 A. I can.

15 Q. If you will go ahead and do that, please.

16 A. So Exhibit 87 -- may I back up a little bit and
17 explain this?

18 Q. Yes.

19 A. So when we initially started to do our
20 examination on the evidence, we set up a taint
21 review locally. That quickly did not go as planned.
22 It was a massive undertaking, and we decided to use
23 another system at headquarters called BIDMAS.
24 Forgive me if I butcher the name, but it's Bureau of
25 Investigative Data Management Analysis System.

1 They were able then to take documents that they
2 can ingest into that system and review them up
3 there.

4 So after we had processed all of the evidence
5 into our system, we ran a script and took out
6 everything that we could take out that could be
7 ingested into the BIDMAS system.

8 As part of us doing that, we also indexed every
9 file, every folder, every word in our forensic
10 software. As part of that, we give it an item
11 number. We appended that item number to every file
12 and every folder as we exported them out one piece
13 of evidence at a time so that we could track from
14 the BIDMAS system when they came back to our system
15 because they're dissimilar systems.

16 So the way that I tracked that number or that
17 file, your exhibit that was given to me was -- I was
18 able to see that it came off a certain piece of
19 evidence, when it got back to me via the item
20 number, I could then cross reference that back into
21 my system and then review that document.

22 Q. And so in preparation of coming here today,
23 were you asked to figure out through that process
24 that you've described that had the identifier that
25 you had placed before it went to BIDMAS, is that how

1 you're able to tell the location?

2 A. That's correct.

3 Q. So Government's Exhibit 87, which is Cash
4 Outflows, just an Excel spreadsheet, where was that
5 located?

6 A. That was located on two pieces of evidence.
7 One in a storage room on the first floor. And we
8 used a naming convention to mirror -- for every
9 image that we created, we used a naming convention
10 to mirror the room numbers that were shown on the
11 sketch earlier.

12 So we had a naming convention of F14RV Room V.
13 External media 2 is the second piece of external
14 media found in that room and that search room
15 location was the storage room.

16 The other piece of evidence that we found that
17 exhibit on was F1RW Computer 1, C1, which stood for
18 computer underscore 2. The second hard drive in
19 that computer. And that was found in Ty Fowle's
20 office.

21 Q. So I'm going to slow you down for just a
22 second.

23 So you found it in two locations, is that
24 correct?

25 A. That's correct.

1 Q. One of which was Ty Fowle's office?

2 A. That's correct.

3 Q. And what was room? We've got the diagram,
4 Government's Exhibit 110.

5 A. If you should RW, so find room W.

6 Q. On the first floor?

7 A. On the first floor. Right -- yes, right here.
8 That's correct.

9 Q. Now, and then you said it was found in a second
10 location as well, is that correct?

11 A. That's correct.

12 So that would be Room V.

13 Q. Right next door?

14 A. Correct.

15 Q. Okay. That's Government's Exhibit 87.

16 Are there other exhibits that we're going to
17 through so you can tell us and don't worry --

18 A. We used the same methodology to determine where
19 every piece of evidence was found in the search
20 location. That's how we documented it in our
21 examinations.

22 MS. EGGERS: Your Honor, at this time I
23 would ask to introduce Government's Exhibits 88, 89,
24 496, 583 through 586.

25 THE COURT: Okay. 86 and 89 will be

1 admitted.

2 MS. EGGERS: I'm sorry. 88 and 89.

3 THE COURT: I'm sorry. 88 and 89 will be
4 admitted. 496 will be admitted and 583 through to
5 589.

6 MS. EGGERS: 586, I'm sorry.

7 THE COURT: 586 through 589.

8 (The referred-to documents were admitted
9 in Evidence as Government's Exhibits 88, 89,
10 496, 583, 584, 585, and 586.)

11 BY MS. EGGERS:

12 Q. So, Special Agent Tedder, you told us about
13 Government's Exhibit 8 --

14 MS. EGGERS: One correction, your Honor.
15 583 through 586.

16 583 to 586, I'm sorry.

17 So 88, 89, 496, 583 to 586.

18 THE COURT: Those will be admitted.

19 BY MS. EGGERS:

20 Q. So you've told us where Government's Exhibit 87
21 was.

22 Where was Government's Exhibit 88?

23 A. Government's Exhibit 88 was found in the server
24 room.

25 Q. In the server room?

1 A. Correct.

2 Q. Were there a number of items found in the
3 server room?

4 A. There were.

5 Q. Okay.

6 And so I don't to go slow to get through these,
7 so 88, you said, was in the server room?

8 A. Correct. Which is Room J.

9 Q. Room J?

10 A. Correct.

11 Q. And what about Government's Exhibit 89?

12 A. That was also found in the server room.

13 Q. Are both of those items both spreadsheets?

14 A. Spreadsheet and -- yes.

15 Q. Let's go to Government's Exhibit 496.

16 Where was Government's Exhibit 496 found?

17 A. It was found in the server room as well.

18 Q. And is 496, is it some document entitled Wire
19 Authorization Cash Transfer Form?

20 If you just look at the screen next to you.

21 A. Yes.

22 Q. Okay.

23 And the amount for this wire authorization cash
24 transfer form is how much?

25 A. It was \$1,100,000.

1 Q. And it indicates there, 5116 to pay down on
2 1503.

3 Is that what it says?

4 A. That is correct.

5 Q. Let's go to Government's Exhibit 583.

6 Where was that found?

7 A. That was found in two locations, Douglas
8 Ballast's office and Ty Fowle's office.

9 Q. Government's Exhibit 584?

10 A. That was found in three locations.

11 Ty Fowle's office. A second floor hallway.

12 And Adriana Tidwell's office.

13 Q. 585?

14 A. That was found in Ty Fowle's office.

15 Q. And is 585 a spreadsheet of some kind?

16 A. It is. I have it as a CR -- yes, the only
17 locator I can also -- it is an Excel spreadsheet.

18 Q. And then, finally, Government's Exhibit 586,
19 where was that found?

20 A. That was found in four locations. They would
21 Ty Fowle's office, Douglas Ballast's office, Adriana
22 Tidwell's office and Ty Fowle's office again,
23 another hard drive.

24 Q. Now, you were saying something after y'all went
25 and y'all had to bring some stuff back to the RCFL.

1 You got the hard drive with the PSTs on it.

2 When y'all were processing data y'all didn't
3 have the ability, did I understand you correctly, to
4 put a filter in place so that it could easily be
5 used by a filter agent, is that correct?

6 A. We put a filter in place there and was
7 successful. The issue was, there was an over -- a
8 large amount of taint review. It would take months
9 and months. And one agent came over to do that, and
10 forgive me, I don't remember his name off the top of
11 my head. But he went back and said that this was
12 going to be impossible to do the way it was.

13 Q. So y'all had the filter, it's just the volume
14 of data?

15 A. The volume of data was overwhelming to that
16 agent.

17 Q. Okay. And so as a result, the data you said,
18 and you talked about running a script. And then
19 ended up getting load files up to BIDMAS; is that
20 correct?

21 A. That's correct.

22 MS. EGGERS: If I may have a moment, your
23 Honor.

24 BY MS. EGGERS:

25 Q. And I didn't ask this, how long have you been

1 an agent again?

2 A. I have been an agent for if -- I have been with
3 the Bureau since 1997. So let's clarify that.

4 Q. Okay.

5 A. So I was a supervisor over the IT department
6 starting in 1997, for about four and a half years.
7 I went through the Academy in October -- September
8 of 2001, and I've been an agent since then.

9 Q. And you said a filter was put into place, so
10 y'all put a filter into place.

11 I didn't ask you, what is filter? What do you
12 mean by that? What is a filter? You know, a filter
13 was put into place?

14 A. So I was -- one of the co-case agents gave us a
15 list of taint terms that was provided to them. We
16 took those taint terms and created a script.

17 We ran that script against every piece of
18 evidence in every examination. We had broken down
19 this case into, I believe, nine initial examinations
20 to break the data up. There's probably about 60
21 terabytes of data, if I remember correctly.

22 So we ran those taint terms against every piece
23 of evidence and every examination, and we flagged
24 those items that could be possible taint material.

25 Q. And you are using the word "taint," and you're

1 using the word "filter."

2 Is this in order to make sure the FBI doesn't
3 get -- doesn't have come into contact with -- or the
4 case agent doesn't come into contact with its
5 potentially privileged information, is that what a
6 filter is?

7 A. That's correct.

8 So we have the ability with our software to
9 create a digital fence. So we can give one agent
10 access to everything. And if he tags that or checks
11 that item, the other side, we can set that they
12 don't have the same rights to see those files on our
13 forensic software.

14 Q. So there's a filter agent and then there's --

15 A. And there's an investigative agent.

16 MS. EGGERS: No further questions, your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. PELLETIER:

20 Q. Agent Tedder, you talked about a filter team
21 running search terms?

22 A. I ran the search terms.

23 Q. And when did you do that, sir?

24 A. Probably May of 2017, was the last time that we
25 run the search terms to create -- I'm sorry. We ran

1 the search terms earlier than that. May would be
2 the last time that we actually created the load
3 files for BIDMAS. I'm sorry.

4 Probably within a couple of weeks of getting
5 everything processed.

6 Q. Probably or definitely?

7 A. Definitely.

8 Q. All right.

9 Do you know what date that was?

10 A. I do not have a date in front of me, no, sir.

11 Q. Now, when you went in to search this premises,
12 there was a private company on the first floor that
13 you guys tried to go in and search.

14 Do you remember this?

15 MS. EGGERS: Your Honor, I'm going to
16 object, if we may approach.

17 THE COURT: Okay.

18 (The following proceedings were had at
19 sidebar without being reported:)

20 BY MR. PELLETIER:

21 Q. So it is true there was a private company, the
22 Hartnett Group on the first floor, and you didn't
23 know that when you went in there, did you?

24 A. I didn't go in there.

25 Q. All right.

1 And you tried to go in there; is that correct?

2 A. Again, I was not part of the initial search
3 team. The CART people, the forensic examiners
4 didn't enter the building until the building was
5 secured. So I wasn't part of that. I don't know if
6 they tried to go in there or not.

7 Q. All right.

8 And so you're getting all of your information
9 about where items were searched from, from that
10 chart?

11 A. I'm not following you.

12 Q. You said that things were seized from Ty
13 Fowle's office, for instance?

14 A. That's correct.

15 And that was done by -- somebody else created
16 that sketch.

17 Q. So you're basing your statement as to where it
18 came from, from what you saw on that chart?

19 A. From where we saw it on the chart and the
20 seizing agents, that's correct.

21 Q. Okay.

22 And you have a brother named Michael, correct?

23 A. I do.

24 Q. And he's both a friend and a business partner
25 of an individual named Kyle Bass, isn't he?

1 A. That's correct. They've been friends since
2 high school.

3 Q. And you know, do you not, that Kyle Bass wanted
4 to acquire UDF's assets, don't you?

5 A. I'm not aware of that.

6 Q. Well, how many times do you meet with Kyle Bass
7 and your brother?

8 A. The last time I met with Kyle Bass and my
9 brother would be March 26th of 2020.

10 Q. All right.

11 And how about before that? How often have you
12 met with Kyle Bass?

13 A. The time before that would have been a few
14 years back before that.

15 Q. How about before the search?

16 A. We didn't meet before the search.

17 Q. Well, the search, ever before the search,
18 before 2016, you never met with Kyle Bass?

19 A. That's correct.

20 Q. And how about your brother?

21 A. I don't know.

22 Q. You do know that Kyle Bass was tipped off to
23 the search, don't you?

24 A. No, I don't.

25 Q. You never heard that?

1 A. I've never heard that.

2 MR. PELLETIER: May I have a moment, your
3 Honor?

4 Thank you. No further questions, your
5 Honor.

6 MR. STEPHENS: No, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. EGGERS:

9 Q. What were you doing on March 26th, 2020, when
10 you came into contact with Kyle Bass?

11 A. I got a call from my brother at 2:15 in the
12 morning. He had called me, his daughter was killed,
13 my niece, in a horrible -- in a -- four-wheeler
14 accident.

15 So I had to go down to Fredricksburg. I got
16 there by 8:15 in the morning. And during that time,
17 my brother called several other of his friends. And
18 I believe Mr. Bass was one of those people that were
19 friends with Mike at the time. And he had come down
20 there to console my brother because he was not in a
21 good way.

22 Q. Did you and Kyle Bass discuss UDF at your -- at
23 this -- in March of 2020, when you're there
24 consoling your brother because of the loss of his
25 daughter?

1 A. No, ma'am.

2 So Mr. Bass and several of his friends took
3 care of my brother, while I went and cleaned up the
4 blood and brain matter off the road.

5 Q. And then before that, you said that there was
6 one time a few years back that you saw Mr. Bass?

7 A. That's correct.

8 Q. When was that?

9 A. Mr. Bass's mother had died. My mother was
10 friends with Mrs. Bass, because my brother and Kyle
11 were friends at the time. My mother was friends
12 with all of my friends' friends and my brother's
13 friends, and they were friends. And when Mrs. Bass
14 died, my mother wanted to go to the memorial
15 service. So I took her to the memorial service.

16 Q. Did you talk about UDF at the memorial of
17 service of Mr. Bass's mother?

18 A. No.

19 MS. EGGERS: Thank you, sir.

20 MR. PELLETIER: Nothing more, your Honor.

21 MR. STEPHENS: No, sir.

22 MR. LEWIS: No, sir.

23 THE COURT: Thank you. You may step down.

24 MS. EGGERS: Sang Chung.

25 (SANG HO CHUNG was duly sworn by the

1 Court.)

2 DIRECT EXAMINATION

3 BY MS. EGGERS:

4 Q. Go ahead and please state your name.

5 A. Sang Ho Chung.

6 Q. Okay. And if you feel comfortable enough to
7 take off your mask, you're allowed to take off your
8 mask while you're speaking. Yes, sir.

9 A. Sure.

10 Q. And if you could say your name again, I'm.
11 Sorry?

12 A. Sang Ho Chung. C-H-U-N-G, last name.

13 Q. Mr. Chung, where are you employed?

14 A. I work for the FBI, the Federal Bureau of
15 Investigation.

16 Q. And what position do you hold for the FBI?

17 A. My title is supervisory computer specialist.
18 And I'm in charge in that BIDMAS program at the FBI.

19 THE COURT: Let me stop you there. I'm
20 going to ask you speak into that microphone
21 directly, so that your voice projects loud and talk
22 good and slow.

23 THE WITNESS: Okay. Sure. Sorry about
24 that.

25

1 BY MS. EGGERS:

2 Q. You said you work at BIDMAS; is that correct?

3 A. Yes.

4 Q. Okay. And what position do you hold at BIDMAS?

5 A. I'm in charge of the BIDMAS program.

6 Q. I'm sorry. There was talking behind me.

7 You're in charge of what?

8 A. The BIDMAS program.

9 Q. And what is the BIDMAS program?

10 A. It's basically it's an acronym for Bureau of
11 Investigative Document Management and Analysis
12 System. It's basically a document review platform.

13 Q. A document review platform?

14 A. Yes.

15 Q. Okay. And how long have you held that
16 position?

17 A. Since 2009.

18 Q. And what is your educational background,
19 Mr. Chung?

20 A. I have a mechanical engineering degree from
21 Virginia Tech.

22 Q. A mechanical engineering degree?

23 A. Yes.

24 Q. And the BIDMAS platform, was the BISMAS
25 platform used in this particular case that we're

1 here about today?

2 A. Yes, correct.

3 Q. And did you receive data both in -- both PSTs
4 or email and non-PST information as well?

5 A. Yes. We usually receive a copy of the data.
6 It comes in DVDs or hard drives from the agent.

7 Q. And then go ahead and just generally explain to
8 us what you do, once you receive the data, what you
9 did when you received data in this case?

10 A. Sure. Basically, we be learning the data set
11 from the copy that we are provided from the agent.
12 So, basically, the loading process is a two-step
13 process. Step one is basically discovery of the
14 data set, what type of data that we have.

15 Usually, the category into two areas, one would
16 be a PST email, and second would be a catchall,
17 basically all loose files. Loose files contain
18 Excel spreadsheets, Word documents, .pdf, or
19 anything else that comes with it. That's step one.

20 And step two process is to load the data.
21 Basically, as we load the data set, or ingest into
22 BIDMAS system, assign a unique identifier, we call a
23 document -- a document number, which we call it DOC
24 ID.

25 And the second thing we do on the ingestion

1 side is that system indexes the data set, so it
2 would be easier and faster for a user to search the
3 data that's been loaded into BIDMAS.

4 Q. And is that the process that you followed in
5 this case that you're here testifying about today?

6 A. Yes.

7 Q. And in a situation like this one, where there
8 is a filter that's put into place, does BIDMAS take
9 any steps to filter information?

10 A. That's correct. Well, basically, what we do is
11 if the agent notifies us that there could be
12 potentially a privileged document, we ask for the
13 list of, I guess the names and search terms they
14 want us to run after we load the data set. So
15 basically after we do all of the data, we use those
16 terms against the data set that's already been
17 loaded, and then we search it and we segregate those
18 datasets into a folder that's not available to the
19 investigative team.

20 Q. So there's stuff that is taken hidden not
21 available to the investigative team; is that
22 correct?

23 A. Correct.

24 Q. And if is there filter agent or filter AUSA on
25 it, are they given access to the other side of the

1 data?

2 A. Yes.

3 Q. And that was the process utilized in this
4 particular case?

5 A. Yes.

6 MS. EGGERS: Your Honor, if I may
7 approach.

8 BY MS. EGGERS:

9 Q. Mr. Chung, prior to coming here today, did you
10 look at various of the Government's exhibits and
11 then certain pages of various Government's Exhibits?

12 A. Yes.

13 Q. In order to -- I'm going to hand you a list, in
14 order to determine if those were documents for PSTs
15 that were processed by BIDMAS in this particular
16 case?

17 A. Yes.

18 Q. Okay.

19 And that list that I have handed you, are those
20 the exhibit numbers and then the some between 350
21 and 409 that the specific pages on that range, are
22 those items that were processed by BIDMAS?

23 A. Correct.

24 Q. And those were all items that came from the
25 execution of the search in this particular -- or the

1 data that y'all received at BIDMAS.

2 A. Okay. All of the data we have received from
3 the case agent.

4 Q. Here down in Texas, we have the RCFL. So if we
5 heard that the RCFL is the one that was giving you
6 the data, does that make sense?

7 A. Basically, the RCFL were processing the
8 datasets and provide the copies to the case agent.
9 And the case agent will make me a copy and send it
10 to the headquarters in DC. That's where we load the
11 data.

12 Q. And that filter process was put into place into
13 this case; is that correct?

14 A. Yes. Correct.

15 MS. EGGERS: Your Honor, I can provide the
16 list to the Court, but I have a list of number of
17 Government's exhibits. I would rather do this than
18 just reading them aloud. I thought that might be a
19 more -- but at this time the list, and Mr. Pelletier
20 has a copy of the list as well, your Honor. And
21 this is a subset of some of the items that Mr. Fowle
22 previously authenticated.

23 But I would be moving at this time, your
24 Honor, for all of the items that are listed on the
25 list I gave to Mr. Pelletier. I would be asking to

1 introduce them into evidence.

2 THE COURT: Okay. And you want to give me
3 the list?

4 MS. EGGERS: Yes, your Honor.

5 And the Court will see that there's
6 certain of the exhibits, it's just certain pages of
7 them.

8 THE COURT: Right.

9 Any objection?

10 These will be admitted into evidence.

11 MS. EGGERS: If it would help, I will
12 always provide Madam Court Reporter.

13 THE COURT: Yes.

14 (The referred-to documents were admitted
15 in Evidence as Government's Exhibits 85 to 89,
16 124B, 143, 144, 146 to 157, 165 to 168, 170 to
17 171, 174 and 175, 195 to 198, 200 to 245 248 to
18 271, 279 to 303, 309 to 314, 350 (p. 13-21),
19 351 (p. 10-26), 352 (p. 14-44), 353 (p. 14-20),
20 354 (p. 20-23), 355 (p. 19-27), 356 (p. 20-23),
21 357 (p. 24-34), 358 (p. 22-28), 359 (p. 22-31),
22 360 (p. 12-16), 361 (p. 13-18), 362 (p. 17-58),
23 363 (p. 13-50), 364 (p. 12-71), 365 (p. 15-54),
24 366 (p. 18-52), 367 (p. 16-45), 368 (p. 17-43),
25 369 (p. 15-46), 370 (p. 19-69), 371 (p. 15-74),

1 372 (p. 18-55), 373 (p. 8-12), 374 (p. 7-21),
2 375 (p. 15-44), 376 (p. 13-38), 377 (p. 16-67),
3 378 (p. 21-40), 379 (p. 20-35), 380 (p. 14-29),
4 381 (p. 27-71), 382 (p. 37-68), 383 (p. 21-52),
5 384 (p. 9-29), 385 (p. 13-54), 386 (p. 15-82),
6 387 (p. 22-56), 388 (p. 14-68), 389 (p. 18-41),
7 390 (p. 25-48), 391 (p. 28-65), 392 (p. 17-57),
8 393 (p. 21-65), 394 (p. 21-134), 395 (p.
9 20-61), 396 (p. 25-108), 397 (p. 12-19), 398
10 (p. 20-39), 399 (p. 21-72), 400 (p. 32-91), 401
11 (p. 26-38), 402 (p. 18-54), 403 (p. 20-38), 404
12 (p. 28-70), 405 (p. 12-92), 406 (p. 28-95), 407
13 (p. 23-66), 408 (p. 19-61), 409 (p. 17-84),
14 431 to 437, 441 to 464, 487A and 487B, 488, 493
15 to 496, 498 to 512, 514 to 515, 517 to 544B,
16 545 to 547, 552A to 552B, 573 to 574, 579A to
17 579J, 583 to 586, and 593 to 599.)

18 BY MS. EGGERS:

19 Q. You said that there was a DOC ID or some kind
20 of name or something?

21 A. Yes. A unique identify for each document that
22 we ingest into BIDMAS.

23 Q. Now, so there's PSTs. That's some of the items
24 that were found. And then there were also, you said
25 non-PSTs; is that right?

1 A. Yes.

2 Q. Okay.

3 And so looking at Government's Exhibit 124B,
4 which is on the list of exhibits, looking at
5 Government's Exhibit 124B, down here at the bottom,
6 there's a number.

7 A. Correct. That is the BIDMAS document ID number
8 for each document that we have ingested into BIDMAS
9 for this case, yes.

10 Q. And so on this particular one, the DOC ID
11 number is down at the bottom; is that correct?

12 A. Yes.

13 That's where we usually put the DOC ID.

14 Q. And then also on this one, there is a -- what I
15 will call Bates number on the bottom right; is that
16 correct?

17 A. Correct. That's what the agent/prosecutor
18 asked us to put it in.

19 Q. Have the DOC ID and then some other Bates
20 number on top of it?

21 A. It makes it easier for us at the BIDMAS team to
22 use the DOC ID to search the documents versus the
23 Bates number provided on the right side.

24 Q. And then going to -- I'm just going to show one
25 so we can see it's a little bit different, going to

1 Government's Exhibit 350, and the specific pages
2 that -- going to Government's Exhibit 350, and that
3 portion that you have authenticated, is page 13
4 through page 21.

5 Now, this one is also an email, but it looks
6 like the DOC ID is at the top. Explain to us why it
7 looks different?

8 A. One of the reasons it was not Bates stamped,
9 but someone, maybe the agent or analyst, has printed
10 this document, and the first part, the top part that
11 you see, we call it the document header information.

12 The first one, the first line is a document ID
13 number and on below, it tells you all of the
14 relevant information we need for the document.

15 In this case, it's an email, it shows you data
16 from, to, cc, bcc, and subject and data and
17 attachment information. So I know this came from a
18 BIDMAS printout.

19 Q. So somebody went into BIDMAS that had their
20 access, and they printed it out from BIDMAS there,
21 correct?

22 A. We allow the printing of a document from the
23 system itself. So ...

24 Q. And the same data set, both PSTs, but this
25 one's just been printed directly out of BIDMAS and

1 the other one was when y'all produced the data.

2 A. Yes, we exported out the case.

3 MS. EGGERS: Can I have one moment, your
4 Honor?

5 Nothing further at this time, your Honor.

6 MR. PELLETIER: No questions.

7 MR. STEPHENS: No, no, sir.

8 MR. ANSLEY: No, your Honor.

9 THE COURT: Thank you, you may step down.
10 Thank you very much.

11 MS. EGGERS: Pam Hanson, your Honor.

12 (PAMELA HANSON was duly sworn by the
13 Clerk.)

14 DIRECT EXAMINATION

15 BY MS. LYONS:

16 Q. Good afternoon. Can you please introduce
17 yourself to the members of the Jury?

18 Yes, you can remove your mask.

19 A. Pamela Hanson.

20 Q. And, Ms. Hanson, how are you employed?

21 A. I'm an agent with the FBI.

22 Q. How long have you been an FBI agent?

23 A. Eleven years.

24 Q. And as an FBI agent, do you regularly execute
25 federal search warrants as part of your job?

1 A. I do.

2 Q. Did you participate in the execution of a
3 search warrant at the UDF premises on February 18,
4 2016?

5 A. I did.

6 Q. And was that located at 1301 Municipal Way in
7 Grapevine, Texas?

8 A. Yes, it was.

9 Q. Is that in the Northern District of Texas?

10 A. Yes, it is.

11 Q. Can you please generally describe how the
12 search warrant was executed?

13 A. I was the seizing agent for the search warrant.
14 So basically my role was to manage the search, make
15 sure that pictures were taken, and a sketch was done
16 and I was available for questions.

17 Q. And as part of the execution of that search
18 warrant, were physical documents seized from 1301
19 Municipal Way in Grapevine?

20 A. Yes.

21 Q. Do you see these two boxes here that have been
22 labeled Exhibits 111 and 112?

23 A. Yes.

24 Q. Were these items seized from the UDF premises
25 on February 18, 2016?

1 A. Yes, they were.

2 MS. EGGERS: I'd like to offer
3 Government's Exhibit 111 and 112.

4 THE COURT: Okay. They will be admitted.

5 (The referred-to documents were admitted
6 in Evidence as Government's Exhibits 111 and
7 112.)

8 BY MS. LYONS:

9 Q. And, Ms. Hanson, once these boxes were seized,
10 were their contents digitized?

11 A. Yes.

12 Q. How was that done?

13 A. When I just scanned them, is that what you're
14 asking me?

15 Yeah, I scanned them last week.

16 Q. And did you personally scan the contents of
17 these files?

18 A. Yes.

19 MR. GOTTFRIED: Thank you. No further
20 questions.

21 THE COURT: Nobody?

22 MR. STEPHENS: No, sir.

23 MR. LEWIS: No.

24 THE COURT: You may step down.

25 MS. EGGERS: Special Agent Tom Cook.

1 THE COURT: Raise your hand to be sworn.
2 (THOMAS COOK was duly sworn by the Clerk.)
3 DIRECT EXAMINATION
4 BY MS. EGGERS:
5 Q. Please state your name.
6 A. Special Agent Thomas Cook.
7 Q. And you said you're a Special Agent. What
8 agency do you work for?
9 A. I work in the FBI, and I'm assigned to the
10 Dallas division.
11 Q. And how long have you been a Special Agent with
12 the FBI?
13 A. Since August of 2014.
14 Q. And did you work for the FBI prior to that?
15 A. I did. I was an intelligence analyst. And I
16 started with the Bureau in 2011.
17 Q. And what squad are you currently assigned to at
18 the FBI?
19 A. I'm currently assigned to a cyber squad.
20 Q. Have you been involved in this investigation in
21 this case?
22 A. Yes, I have.
23 Q. And during the course of the investigation,
24 were records obtained from various sources?
25 A. Yes, ma'am, they were.

1 Q. Okay.

2 And were some of the records obtained, did they
3 actually come from the Securities and Exchange
4 Commission?

5 A. Yes, that's correct.

6 Q. And were those records either that were filed
7 with the SEC or records that the SEC received from
8 the UDF entities?

9 A. Yes. Both instances are in this case.

10 MS. EGGERS: Your Honor, if I may
11 approach.

12 THE COURT: Yes.

13 BY MS. EGGERS:

14 Q. So I don't mess up reading numbers, which I
15 will do in a heartbeat. I'm going to hand you a
16 list of records that were provided to the SEC by the
17 UDF entities.

18 Have you looked at these -- these Government's
19 exhibits that are listed in front of you?

20 A. Yes. I have reviewed all of these Government
21 exhibits.

22 Q. And were all of those records, were they
23 received by either the US Attorneys Office or the
24 FBI from the Securities and Exchange Commission?

25 A. That's correct.

1 Q. And these items that are listed here, and we'll
2 get to the certified copies of something else in the
3 moment, were all of these records that were received
4 from or by the SEC from the UDF entities?

5 A. Yes. All of these numbers here were received
6 by the SEC from UDF entities, that's correct.

7 MS. EGGERS: Your Honor, at this time I
8 would ask to introduce, and I can bring a list up to
9 the Court and I will bring it to the court reporter.
10 But I would ask to introduce the Government's
11 exhibits that are listed on the paper.

12 Mr. Ansley has a copy and Mr. Pelletier
13 has a copy.

14 MR. ANSLEY: Your Honor, can I speak with
15 Mr. Pelletier briefly?

16 THE COURT: Yes.

17 MR. ANSLEY: Thank you.

18 Your Honor, on this list, the defense does
19 not dispute that the agent can authenticate these
20 records. There are some exhibits that I agree can
21 also be -- can also be introduced through the agent
22 as well. But there are a number that I believe he
23 can authenticate and that's as far as he can go.

24 I can identify to the Court as far as I've
25 gone with this list, but I'm not finished going

1 through it yet this afternoon. I can tell the Court
2 and the Government, you can see my view concerning
3 the individual exhibits as far as I have gotten so
4 far.

5 THE COURT: Okay.

6 MS. EGGERS: Your Honor, these were all
7 provided by UDF's counsel to the Securities and
8 Exchange Commission. So ...

9 MR. ANSLEY: We don't dispute that, your
10 Honor.

11 THE COURT: Okay. Do you need to get into
12 the specific exhibits?

13 MS. EGGERS: Not the specifics, your
14 Honor, but I've brought somebody in because we
15 couldn't get a stipulation on this issue. Somebody
16 with the SEC has been waiting here all day.

17 So I don't want to let her go and then
18 need to have her come in and say these are the
19 records we got.

20 THE COURT: Well, we may have to bring her
21 in.

22 MS. EGGERS: Okay.

23 BY MS. EGGERS

24 Q. And, Special Agent Cook, in addition that these
25 that are listed on the document in front of you,

1 during the course of the investigation, were
2 certified copies of the SEC filings by UDF III,
3 UDF IV, and UDF V, obtained from the SEC?

4 A. Correct. 10-Ks and 10-Qs, that's correct.

5 Q. And then also 8-Ks as well?

6 A. I believe that's correct.

7 Q. And those are -- we actually got certified
8 copies of those from the SEC, but the filings
9 themselves are what were filed by the UDF entities;
10 is that correct?

11 A. Correct. Those public filings were received
12 from the SEC with the certification, that's correct.

13 MS. EGGERS: Your Honor, at this time, I
14 would ask to introduce Government's Exhibits 82, 83,
15 and 84.

16 THE COURT: I heard the first two, but not
17 the third.

18 MS. EGGERS: I'm sorry. 82, 83, and 84.

19 THE COURT: Those will be admitted.

20 (The referred-to documents were admitted
21 in Evidence as Government's Exhibits 82, 83,
22 and 84.)

23 BY MS. EGGERS:

24 Q. Now, in addition to getting records from the
25 SEC, during the course of this investigation, were

1 certified copies of various incorporation records
2 for the various UDF entities obtained by the FBI?

3 A. Yes, they were.

4 Q. And have those been marked as Government's
5 Exhibit 1 through Government's Exhibit 16?

6 A. 1 through 16, that's correct.

7 MS. EGGERS: Your Honor, at this time I
8 would ask to introduce certified copies of the
9 various incorporation records for the UDF entities
10 that have been marked as Government's Exhibit 1
11 through Government's Exhibit 16.

12 THE COURT: Those will be admitted.

13 (The referred-to documents were admitted
14 in Evidence as Government's Exhibits 1 to 16.)

15 BY MS. EGGERS:

16 Q. Now, a little later we're going to hear about a
17 company called DST, which is a third-party company.
18 Again, DST.

19 Were incorporation records obtained for the
20 entity DST?

21 A. Yes, I'm familiar, they were. Those are
22 Exhibit 17.

23 MS. EGGERS: Your Honor, at this time, I
24 would ask to introduce Government's Exhibit 17, a
25 certified copy of the third party entity's

1 incorporation records.

2 THE COURT: That will be admitted.

3 (The referred-to document was admitted in
4 Evidence as Government's Exhibit 17.)

5 BY MS. EGGERS:

6 Q. Now, during the course of this investigation,
7 was a forensic accountant with the FBI, did he work
8 on the case?

9 A. Yes, he did.

10 Q. And did he obtain records from various
11 financial institutions?

12 A. He as well as other agents with the FBI
13 obtained records through subpoena, that's correct.

14 Q. And those -- you said he conducted financial
15 analysis; is that correct?

16 A. He did conduct financial analysis.

17 Q. And you're not here to talk about his financial
18 analysis, are you?

19 A. No. That's is his financial analysis.

20 Q. Okay. But are you here so that we can
21 introduce the various bank accounts that it's your
22 understanding he relied upon for his financial
23 analysis?

24 A. Correct. He's explained his financial analysis
25 to me, how it's prepared. And then what I looked at

1 was the bank records that make up that financial
2 analysis. So I've looked at each of the bank
3 accounts and bank records that would make up that
4 exhibit.

5 MS. EGGERS: Your Honor, at this time, I
6 would ask to introduce Government's Exhibit -- and
7 also let me back up.

8 BY MS. EGGERS

9 Q. They are bank accounts, are they financial
10 institutions?

11 A. Yes, they are.

12 And I think you're referring to the FDIC
13 certifications that they are insured banks.

14 Q. So were also copies, certified copies of the
15 FDIC certificates for the various financial
16 institutions, were they obtained as well?

17 A. Yes.

18 MS. EGGERS: Your Honor, at this time, I
19 would ask to introduce Government's Exhibit 18
20 through Government's Exhibit 66, and Government's
21 Exhibit 75 through Government's Exhibit 81. Again,
22 that's 18 through 66. And 75 through 81.

23 THE COURT: 18 through 66 will be
24 admitted.

25 MR. PELLETIER: Your Honor --

1 THE COURT: No. Hold on.

2 MR. PELLETIER: Excuse me.

3 THE COURT: Go ahead.

4 MR. PELLETIER: Are those FDIC
5 certifications, are they actual bank records, bank
6 account records?

7 MS. EGGERS: They are both.

8 MR. PELLETIER: All right. I have an
9 objection to personal bank records.

10 MS. EGGERS: That is not included.

11 MR. PELLETIER: No objection.

12 MS. EGGERS: These were --

13 MR. PELLETIER: No objection.

14 THE COURT: Okay. Then 18 through 66 and
15 then it was 75 through what?

16 MS. EGGERS: 81, your Honor.

17 THE COURT: 75 through 81 will be
18 admitted.

19 (The referred-to documents were admitted
20 in Evidence as Government's Exhibits 18 to 66
21 and 75 to 81.)

22 BY MS. EGGERS:

23 Q. Now, certified copies of the various UDF
24 entities incorporation records were obtained. The
25 DST, the third party company was obtained.

1 What about certified copies of incorporation
2 records for various developments, limited
3 partnership developments?

4 A. Yes, that's correct.

5 MS. EGGERS: Uh-huh. Your Honor, at this
6 time I would ask to introduce Government's
7 Exhibit 67 through 74, certified copies of
8 incorporation records for various land developments.

9 THE COURT: Okay. Then they will be
10 admitted.

11 (The referred-to documents were admitted
12 in Evidence as Government's Exhibits 67 to 74.)

13 BY MS. EGGERS:

14 Q. And then, finally, in addition, what
15 Mr. Pelletier was just talking about, were bank
16 accounts obtained for the Defendants' individual
17 bank accounts and then for Defendant Wissink and
18 Defendant Greenlaw, closely-held entity bank
19 accounts they had as well.

20 A. That's correct. In their individual capacity
21 or in which they were signors of limited
22 partnerships.

23 MS. EGGERS: Your Honor, at this time --
24 this is the one I think what Mr. Pelletier wanted
25 preserve his objection -- Government's Exhibits 616

1 through 623. Government's Exhibits 616 through 623.

2 THE COURT: Okay.

3 MR. PELLETIER: Same objection, your
4 Honor.

5 THE COURT: Yes.

6 Okay. Tell me those numbers one more
7 time.

8 MS. EGGERS: I'm sorry, your Honor.

9 The last batch was Government's
10 Exhibits 616 through 623.

11 THE COURT: 616 through 623.

12 Okay. I will overrule the objection. I
13 will admit those exhibits for -- only for the
14 purpose of showing motive or to the extent anybody
15 has made any guaranties, any personal guaranties in
16 this case. That's the only purpose that you can
17 consider these exhibits, if they show motive. And
18 the Government will have to explain that in final
19 argument or some sort of guarantee. Then you can
20 consider them for those reasons only.

21 Not for any other reason. Not to show how
22 much -- for any improper consideration of wealth or
23 anything like that.

24 Only for motive.

25 MS. EGGERS: Before we get into the actual

1 exhibits, your Honor, we will make sure to alert the
2 Court as well.

3 THE COURT: Thank you.

4 (The referred-to documents were admitted
5 in Evidence as Government's Exhibits 616 to
6 623.)

7 MS. EGGERS: Your Honor, at this time, I'd
8 ask to go through the various exhibits that UDF's
9 counsel provided to the SEC so that we can have
10 those placed on the record to try and ferret out the
11 objections, I guess. I don't know if the Court
12 wants to do that after court.

13 THE COURT: Why don't we go ahead break
14 here and take that issue up? We've been going late
15 enough.

16 Ladies and gentlemen, why don't we go
17 ahead and end here for today. We'll stay and take
18 up these matters, so we don't have to take your time
19 hashing these through, with you sitting there and
20 you just not being able to hear that. We will end
21 today.

22 When you get home your family members,
23 friends, will ask you where you've been, to the
24 extent they don't know, and once you tell them that
25 you've been selected to serve on this jury, they

1 will start peppering you with questions. You've got
2 to tell them that it's improper for you to talk
3 about the case. Hopefully, they will understand.
4 If not, tell them I specifically instructed you not
5 to talk.

6 Remember what I said earlier today, don't
7 do any independent investigation, don't search on
8 the Internet or social media. Don't post about
9 this, if you post a lot on social media. Don't take
10 a picture of the courthouse and start talking about
11 the case. Please refrain from doing all those
12 things.

13 Thank you for all of your hard work. As
14 I've told you repeatedly at this point, we can
15 minimize the number of days you have to come down
16 here by working a little longer during the day. So
17 that's what I try to do. So that the number of days
18 you have to come down here is mitigated just a
19 little bit.

20 So with that said, we will start at 9 a.m.
21 We can't get started unless all of you are here. If
22 one of you is not here, we will all be waiting.
23 Again, we need you in the box, we need a witness on
24 the stand and we need information being produced to
25 keep this case moving sufficiently. If y'all get

1 here before 9:00, we will be early here. If all you
2 are here at 8:30, we will get you in the box. We
3 try not to start officially at 8:30 because I don't
4 know what y'all's circumstances are. If you all can
5 be here at 8:30, be here at 8:30, and we can get
6 started. No later than 9 in the morning.

7 With that said, go with the court security
8 officer. We will see you in the morning.

9 THE COURT SECURITY OFFICER: All rise.

10 (The jurors exited the courtroom.)

11 THE COURT: Okay. Please be seated.

12 Okay. So now that the Jury is out of the
13 room, let's go ahead and talk about these exhibits.

14 MS. EGGERS: Yes, your Honor.

15 So it sounded as though Mr. Ansley didn't
16 have objection to some, but does have an objection
17 to others, so I'm not sure which is which. But
18 Government's Exhibit 129A. That is actually an
19 email, and I apologize, there was an error in the
20 exhibit list. I wrote 2021; it should have been
21 2014.

22 MR. ANSLEY: Your Honor, may I tell the
23 Court and the Government which ones we have no issue
24 with? That will speed things up.

25 THE COURT: Yes.

1 MR. ANSLEY: 129A, we are agreeable to
2 129A, 129B. All of the 129s.

3 THE COURT: Those will be admitted.

4 (The referred-to documents were admitted
5 in Evidence as Government's Exhibits 129A and
6 129B.)

7 MR. ANSLEY: I believe 247 is already in
8 evidence, your Honor.

9 THE COURT: All right. To the extent it's
10 not, it's admitted.

11 MR. ANSLEY: Between 129 to 247. We do
12 object on hearsay grounds.

13 We are agreeable to 273 Alpha and Bravo.

14 THE COURT: So 273A and B will be
15 admitted.

16 (The referred-to documents were admitted
17 in Evidence as Government's Exhibits 273A and
18 273B.)

19 MS. EGGERS: But not C.

20 MR. ANSLEY: 275, your Honor. 277. 278.
21 304. 308. 349. 485. And 516, I believe. The top
22 of that is hearsay, but I believe the bottom portion
23 of the email communication is a party admission.
24 Therefore, it's admissible.

25 THE COURT: Okay. So you agree that those

1 numbers that you just called out should be admitted?

2 MR. ANSLEY: Yes, sir.

3 THE COURT: And then you object, you
4 object to the numbers you have not called.

5 MR. ANSLEY: That's correct. And to be
6 clear, I don't question whether or not this, the
7 agent or the SEC can authenticate these exhibits,
8 but its hearsay objection that --

9 THE COURT: Hearsay.

10 Okay. Ms. Eggers, all of the defendants
11 object to the hearsay nature of the remaining
12 exhibits, and so what is your view on these?

13 MS. EGGERS: The authors of the various --
14 well, I think 246 -- can I confirm that 246 didn't
15 go into evidence?

16 THE COURT: 246 is already in.

17 MS. EGGERS: Yes. 246 is already in. So
18 I won't address it.

19 So 246 and 247 are already in.

20 THE COURT: Correct.

21 MS. EGGERS: Okay. If my math is somewhat
22 correct, that leaves us with 177, 178, 273C.

23 THE COURT: Correct. 272A and B.

24 MS. EGGERS: 272A and B.

25 THE COURT: 274.

1 MS. EGGERS: Well, with regard to 272A and
2 B, your Honor, it's the Government's position this
3 email by Melissa Youngblood, her name is on that
4 sealed notice. So the hearsay exception is going to
5 being addressed in that.

6 MR. PELLETIER: Judge, if I might, and
7 I'm -- there is now material of privileged.

8 MS. EGGERS: That is what was produced to
9 the SEC. So presumably K&L Gates. The Bates number
10 at the bottom right-hand corner.

11 MR. PELLETIER: If it was produced to the
12 SEC, there is no privilege, for sure. I take your
13 word for it. We just have the hearsay objection.

14 MR. ANSLEY: I'm not objecting to 273A and
15 B.

16 THE COURT: You do not?

17 MR. ANSLEY: That's correct, your Honor. I
18 do not.

19 THE COURT: You do to C, though?

20 MR. ANSLEY: Yes.

21 THE COURT: Right.

22 But 272A and 272B, right?

23 MR. ANSLEY: Yes. We did object on
24 hearsay grounds.

25 MS. EGGERS: Your Honor, the Government

1 filed a sealed notice pursuant to one of the
2 Defendants' motion in limine, and I would rather not
3 speak any more about that. But I identified other
4 individuals --

5 THE COURT: Is it your view that this is a
6 co-conspirator --

7 MS. EGGERS: Yes, your Honor. Yes. The
8 from is, yes.

9 THE COURT: And do all of the outstanding
10 exhibits apply to Melissa Youngblood?

11 MS. EGGERS: No, your Honor. And I don't
12 want to -- no. There are, I think, three of these.
13 The witnesses are here and outside and ready, so
14 I'll bring them in and they can authenticate it that
15 way. But this one is for sure, and then I
16 believe --

17 THE COURT: You have to tell me the names
18 of those people.

19 MS. EGGERS: So this one, 227A and B,
20 those are both from Melissa Youngblood.

21 177. That is an email of Odette Muller.
22 The Government subpoenaed her.

23 178. This was an exchange between Odette
24 Muller and a Steven Joseph.

25 I'm going down the list. 273C, I think

1 that's the next one.

2 THE COURT: 272A and B.

3 MS. EGGERS: 272A and B, those are Melissa
4 Youngblood.

5 THE COURT: 273C, yes.

6 MS. EGGERS: Yes, sir.

7 That one, the Government has a witness,
8 Mr. -- this is actually an exchange between Cara
9 Obert, the defendant, and Anthony Kramer and two
10 other individuals.

11 So to the extent it is not the Defendants'
12 statement, the Government can redact that. But, I
13 mean, it's the Defendants' statement, so that's the
14 exception there.

15 MR. ANSLEY: That's agreeable, your Honor.
16 I agree.

17 THE COURT: That's C?

18 MS. EGGERS: 273C, yes.

19 THE COURT: So that will be admitted.

20 MS. EGGERS: And then 274?

21 THE COURT: Correct.

22 MS. EGGERS: This is the same exception as
23 Ms. Youngblood. This individual was also identified
24 on the Government's list. Todd Etter.

25 THE COURT: Can I see the whole document?

1 MR. PELLETIER: Okay. Thank you.

2 MS. EGGERS: 274, your Honor.

3 THE COURT: Melissa Youngblood?

4 MS. EGGERS: No. It's Todd Etter, who is
5 also on the list.

6 275.

7 THE COURT: No, he's agreed to that. The
8 next one is 305 to 306 and 307.

9 MS. EGGERS: 305, that's I think the
10 Government's next witness, so we will have him here
11 in a little bit, or tomorrow I should say.

12 The remainder of the chain is the
13 Defendants' statements and then Mr. Etter's
14 statement. So 305 and you said 306?

15 This is Mr. Etter. Then the next one I
16 have is 491.

17 THE COURT: 486.

18 MR. ANSLEY: I would add to the objection
19 486, it appears that it might be a combined
20 document.

21 THE COURT: I couldn't hear.

22 MR. ANSLEY: It appears that it might be a
23 combined document. A draw request and then emails
24 from a reliability standpoint, it's not clear
25 whether it's a single document or more than one.

1 MS. EGGERS: The Bates numbers are
2 chronological from UDF's counsel. It's the backup
3 documentation that they were maintaining for draw
4 requests. So I'm not sure, I mean, that goes more
5 to the weight, not the admissibility.

6 MR. ANSLEY: I don't object about that.

7 THE COURT: Then 491. And 593.

8 MS. EGGERS: 491, we will have that
9 witness that is in the chain, but again the
10 communications with Defendant Benjamin Wissink, so
11 he's a defendant in the case. So it's just an
12 exchange between the defendant and an employee.

13 The last one -- I'm sorry, your Honor.

14 THE COURT: 592.

15 MS. EGGERS: 592 is, this is the letter
16 from K&L Gates disclosing these materials, what
17 matters about this is the date, your Honor.

18 And we will tie that up later. But this
19 is -- it is -- how do I say it, it is an agency
20 letter. These defendants are the UDF executives and
21 counsel for the UDF entities sent this letter to the
22 SEC. And this is the earliest date of submission.
23 This is going to become relevant to some disclosures
24 later on. That's why we need that date.

25 To the extent there's a hearsay objection,

1 I mean, this is their agency. It's counsel for the
2 UDF entities and the defendants are the UDF
3 executives, they said repeatedly.

4 MR. ANSLEY: We object also, your Honor,
5 to relevancy. And it's unduly prejudicial as well.
6 It effectively injects the SEC investigation into
7 this case.

8 THE COURT: What do you say to the
9 co-conspirator exception to the hearsay rule that is
10 the bulk, the bulk of these documents appear, it
11 appears to me that the bulk of these documents in
12 response to your hearsay objection is the
13 co-conspirator rule and/or, it could be both.
14 Statements by your clients, that they're admissions.

15 MR. ANSLEY: Yes, your Honor. As far as
16 the second part is easy where it it's an email chain
17 that can be broken up to allow the Defendant's
18 admission, we are agreeable to that.

19 At this point, I don't believe that, I
20 think it's only Mr. Etter and Ms. Youngblood. I
21 don't believe it's been sufficiently tied to either
22 one of them or both are co-conspirators in the case,
23 therefore, I think we're not at the place where the
24 co-conspirator exception would apply.

25 MR. PELLETIER: Or Odette Muller as well.

1 MS. EGGERS: I have not suggested that.

2 We have --

3 THE COURT: You said she's outside.

4 MS. EGGERS: Yes, your Honor.

5 THE COURT: Okay. So, essentially, then
6 it sounds to me like where we are procedurally, Mr.
7 Ansley and all of the Defendants have joined this
8 objection. They are of the view that these remain
9 hearsay because you haven't established that, at
10 least as it relates to Ms. Melissa Youngblood and
11 Etter, that they are co-conspirators.

12 MS. EGGERS: Yes, your Honor. The
13 Government believes we have, as it concerns
14 Ms. Youngblood. As the Court recalls,
15 Mr. Buffington said that it was Mrs. Youngblood that
16 he was communicating with. That is what ultimately
17 led to Defendant Greenlaw coming down and making
18 that sales pitch. And then also the email letter
19 back saying we're not going to do UDF V,
20 Ms. Youngblood was also on that as well.

21 At that point, and then also as the Court
22 knows, you can look at the document itself and
23 looking at the document itself you're going to see
24 that Ms. Youngblood is getting records to Navigant,
25 which is what I will call manipulated spreadsheets.

1 So even the document itself would help
2 support that she's a member of it. That's as it
3 concerns Ms. Youngblood, your Honor.

4 As it concerns Mr. Etter, if we look at
5 those emails, it's going to be communications back
6 and forth between the Defendant and Mr. Etter. I
7 can provide the Court with cases that when you have
8 a defendant that is charged engaging with other
9 people, if the Court doesn't feel we've gotten there
10 yet, I think we will later with Mr. Etter when we
11 get to some of our bank personnel, but the Court can
12 allow the entirety of the statement because
13 otherwise it's one-half of a conversation.

14 I mean, if a defendant was having a
15 speaking conversation with a third party, you
16 wouldn't just have one side of it. It's an exchange
17 and an email is no different. And I can provide
18 cases to the Court tonight if the Court would like
19 for that as it concerns Mr. Etter.

20 THE COURT: Okay. And as it relates to
21 the last objection on, I guess this is Exhibit 592,
22 you need it you say because of this April 30, 2014
23 date.

24 MS. EGGERS: Yes, your Honor.

25 THE COURT: But what to Mr. Ansley's

1 objection that introducing the entire document is
2 prejudicial because apart from the date, they
3 probably don't object to just the date, is the
4 balance of this would be unfairly prejudicial by
5 inserting --

6 MS. EGGERS: And I'm fine with redacting
7 the rest of it, your Honor. All, quite honestly,
8 the Government needs out of this is that it is K&L
9 Gates, in re the matter of United Development
10 Funding, and that first paragraph listing, you know,
11 we're providing these documents.

12 The remainder of it, I honestly don't
13 care. But that date is going to matter to the
14 Government when we get further in witnesses because
15 there was a certification signed by these
16 Defendants.

17 THE COURT: What do you say to that?

18 MR. ANSLEY: Your Honor, we would
19 stipulate, I believe, that the date of production of
20 documents to the SEC. The law firm, I don't think
21 we care about. But the in re line, that is --
22 anybody who knows, knows that is in reference to an
23 enforcement investigation by the SEC. So we would
24 object at a minimum to that in re line.

25 THE COURT: Okay. Well, y'all can talk

1 about some agreeable stipulation. And however you
2 want to characterize the disclosure. I will think
3 some more about the Melissa Youngblood status at
4 this stage overnight. And I'll let you know, first
5 thing in the morning. And I do, I do agree that to
6 the extent there are statements to Etter that
7 contextually you can get those in, so I will allow
8 that in.

9 MR. STEPHENS: Your Honor, if I could one
10 more objection on the record.

11 THE COURT: Speak up good and loud.

12 MR. STEPHENS: Yes, sir. This is a
13 potential constructive amendment of the indictment
14 because it's going to alter the theory that they're
15 presenting to the Jury and that they've got in their
16 indictment.

17 MR. PELLETIER: I think we're talking
18 about this document tonight, right?

19 THE COURT: This one. That's Exhibit No.
20 592.

21 MR. PELLETIER: I think maybe we can hash
22 it out.

23 MS. EGGERS: I think we can reach a
24 stipulation, if the parties could talk.

25 THE COURT: So tonight y'all talk about

1 592. The Etter documents, I'm not -- I'm going to
2 overrule the objection. And the Melissa Youngblood
3 documents, I'm going to think through and go over my
4 notes about the status of the evidence vis-a-vis
5 Melissa Youngblood.

6 MS. EGGERS: Yes, your Honor.

7 THE COURT: Anything else?

8 MS. EGGERS: No, your Honor. Since we've
9 been here so late, the Government still needs to
10 have that meeting with Ms. Youngblood and the other
11 attorney as well.

12 THE COURT: And you will go do that now.
13 Anything else?

14 MR. PELLETIER: None, your Honor.
15 Nothing.

16 MR. STEPHENS: No.

17 MR. LEWIS: No.

18 THE COURT: Okay. Try to be here by 8:30,
19 in case they take me up on it. We don't want to not
20 be ready. We will see you in the morning.

21 THE COURT SECURITY OFFICER: All rise.

22 (Proceedings adjourned at 6:51 p.m.)
23
24
25

C E R T I F I C A T E

We, Zoie M. Williams, FCCR, and Kelli Ann Willis, CSR/CRR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

We further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This 13th day of January 2021.

s/ Zoie M. Williams
s/ Kelli Ann Willis
Zoie M. Williams, FCCR
Kelli Ann Willis, CSR No. 10195
Official Court Reporter
The Northern District of Texas
Dallas Division

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